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This issue contains

THE DEPARTMENT OF THE TREASURY
U.S. Customs Service

NOTICE

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U.S. Customs Service

Treasury Decisions

(T. D. 81–219)

This notice interprets the decision in C.D. 4769, decided September 27, 1978, affirmed by C.A.D. 1236, decided November 15, 1979, which held that certain fabric was coated or filled for the purposes of Headnote 2(a), Subpart 4C, Schedule 3, TSUS.

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., August 19, 1981.

In *H. Rosenthal Co.* v. *United States*, C.D. 4769, decided September 27, 1978, the United States Customs Court held that the fabric from which certain coats were constructed fell within the definition of "coated or filled," in Headnote 2(a), Subpart 4C, Schedule 3, Tariff Schedules of the United States (TSUS). That definition requires that for a fabric to be coated or filled for tariff purposes, the coating or filling must visibly and significantly affect the surface or surfaces thereof, otherwise than by a change in color.

The Customs Court held that it is the *effect imparted* by the coating material, and not the material itself, that must be visible. The Court went on to observe that the fabric before it had the "appearance of stiffness" and concluded, apparently on the basis of that stiffness, the fabric "is coated within the purview of the controlling headnote."

The appellate decision by the Court of Customs and Patent Appeals did not discuss this area except to note that the Customs Court "found the fabric surface to have been visibly affected by the coating."

Stiffness is normally the quality of rigidity which is attributable to an article or fabric. It is not a term which has a clear meaning when used in a description of the surface of that article or fabric. The absence of a specific explanation by the Customs Court in *Rosenthal* of how the surface or surfaces of the fabric in question were visibly affected by the added plastics material is causing confusion and a lack of uniformity in the classification of coated or filled fabrics.

For this reason, Customs is issuing this interpretation of the decision in *Rosenthal*.

Considering the holding in *Rosenthal* and the stated basis for that holding, Customs will consider the surface of a fabric to be visibly affected by a coating or filling if (1) the coating or filling material can be separately distinguished from the fabric by the naked eye; (2) the coating or filling material imparts a shine, luster or glossy appearance, or a dull appearance, that is noticeable by a casual examination; or (3) the coating or filling material has caused the fabric to have a pronounced (obvious) appearance of stiffness. In regard to the appearance of stiffness, the fabric should appear significantly more rigid than that fabric would be if not coated or filled.

All prior rulings by the Customs Service which are in conflict with the preceding paragraph are, pursuant to the authority in section 177.9(d), Customs Regulations (19 CFR 177.9(d)), hereby revoked.

WILLIAM T. ARCHEY,
Acting Commissioner of Customs.

(T.D. 81-220)

Bonds

Approval and discontinuance of bonds on Customs Form 7587 for the control of Instruments of International Traffic of a kind specified in section 10.41a of the Customs Regulations

Bonds on Customs Form 7587 for the control of instruments of international traffic of a kind specified in section 10.41a of the Customs Regulations have been approved or discontinued as shown below. The symbol "D" indicates that the bond previously outstanding has been discontinued on the month, day, and year represented by the figures which follow. "PB" refers to a previous bond, dated as represented by the figures in parentheses immediately following which has been discontinued. If the previous bond was in the name of a different company or if the surety was different, the information is shown in a footnote at the end of the list.

Dated: August 20, 1981.

Name of principal and surety	Date of bond	Date of approval	Filed with district director/area director/amount
Brink's Inc., Thorndal Circle, Darien, CT; Federal Ins. Co. (PB 7/10/75) D 7/10/81 [1]	June 17, 1981	July 10, 1981	New York Seaport $10,000
Gas & Equipment Diving Supplies, Inc., 15200 Intracoastal Dr., New Orleans, LA; American Home Assurance Co.	Mar. 31, 1981	Apr. 30, 1981	Houston, TX $10,000

Name of principal and surety	Date of bond	Date of approval	Filed with district director/area director/amount
Jenaro E. Gonzalez, P.O. Box 10526, Caparra Heights, PR; Puerto Rican-American Ins. Co.	July 13, 1981	July 16, 1981	San Juan, PR $10,000
Great Northern Paper Co., div. of Great Northern Nekoosa Corp., 75 Prospect St., Stamford, CT; Aetna Casualty & Surety Co. (PB 4/1/78) D 3/31/81 [2]	Apr. 1, 1981	Apr. 27, 1981	Portland, ME $10,000
George Moroz, d.b.a.: T & B Services, P.O. Box 5339, San Juan, PR; St. Paul Fire & Marine Ins. Co. (PB 8/5/80) D 7/14/81 [3]	July 10, 1981	July 14, 1981	San Juan, PR $10,000
Netumar International, Inc., 67 Broad St., New York, NY; Federal Ins. Co. D 7/24/81	Mar. 31, 1971	Mar. 31, 1971	New York Seaport $10,000
Matheson Gas—See Searle Medical Products USA Inc.			
Omnium Agencies, Inc., 42 Broadway, New York, NY; Peerless Ins. Co.	Apr. 28, 1981	Apr. 28, 1981	New York Seaport $10,000
Reilly Tar & Chemical Corp., 151 N. Delaware St., Indianapolis, IN; Investors Ins. Co. of America	July 15, 1981	July 16, 1981	New York Seaport $10,000
Riise Shipping Inc., 2208 One Canal Pl., Suite 2208, New Orleans, LA; The Travelers Indemnity Co. (PB 7/5/79) D 6/24/81 [4]	June 24, 1981	June 24, 1981	New Orleans, LA $10,000
S.E.L. Maduro (Florida), Inc., 330 Biscayne Blvd., 10th Floor, Suite 1001, Miami, FL; Peerless Ins. Co.	July 8, 1981	July 31, 1981	Miami, FL $50,000
Searle Medical Products USA Inc., and its div. Matheson Gas, 932 Patterson Plank Rd., East Rutherford, NJ, Peerless Ins. Co. (PB 1/15/80) D 6/25/81 [5]	June 12, 1981	June 25, 1981	New York Seaport $15,000
T & B Services—See George Moroz			
United States Steel International Inc., 600 Grant St., Pittsburgh, PA; Federal Ins. Co.	June 30, 1981	July 8, 1981	New York Seaport $200,000
Williams, Dimond & Co., a Calif. Corp., 100 Oceangate, Suite 40, Long Beach, CA; Aetna Ins. Co. (PB 7/5/76) D 7/5/81 [6]	July 5, 1981	July 27, 1981	Los Angeles, CA $50,000

[1] Surety is American Motorists Ins. Co.
[2] Surety is The Hartford Accident & Indemnity Co.
[3] Principal is George Moroz & Associates.
[4] Surety is St. Paul Fire & Marine Ins. Co.
[5] Surety is Old Republic Ins. Co.
[6] Surety is Hartford Accident & Indemnity Co.

BON-3-10

MARILYN G. MORRISON,
Director,
Carriers, Drawback and Bonds Division.

(T.D. 81-221)

Bonds

Approval of carrier's bond, Customs Form 3587, amendment of T.D. 81-164

T.D. 81-164 relating to the temporary approval of the Carrier's Bond of the following principal is hereby amended as necessary to show that such bond has been permanently approved as noted below.

Dated: August 24, 1981.

	Effective date of permanent authority
Principal: Denton Cartage Co., Inc	Aug. 12, 1981

GEORGE C. STEUART
(For Marilyn G. Morrison, Director,
Carriers, Drawback and Bonds Division).

(T.D. 81-222)

Synopses of drawback decisions

The following are synopses of drawback rates issued November 22, 1978, to July 10, 1981, inclusive, pursuant to sections 22.1 through 22.5, inclusive, Customs Regulations.

In the synopses below are listed for each drawback rate approved under 19 U.S.C. 1313(b), the name of the company, the specified articles on which drawback is authorized, the merchandise which will be used to manufacture or produce these articles, the factories where the work will be accomplished, the date the statement was signed, the basis for determining payment, the Regional Commissioner to whom the rate was forwarded or issued by, and the date on which it was forwarded or issued.

Dated: August 24, 1981.
DRA-1-09

GEORGE C. STEUART
(For Marilyn G. Morrison, Director,
Carriers, Drawback and Bonds Division).

(A) Company: Altec Corp.
Articles: Loudspeaders, microphones, audio systems and parts of audio systems.
Merchandise: Attenuators, push terminals, diaphragms, terminal plates, cable assemblies, nameplates, screws.

Factories: Oklahoma City, OK; Anaheim, CA.
Statement signed: May 22, 1981.
Basis of claim: Appearing in.
Rate forwarded to Regional Commissioner of Customs: Houston, June 25, 1981.

(B) Company: Amoco Oil Co. (Maryland).
Articles: Petroleum products.
Merchandise: Crude petroleum and petroleum derivatives.
Factories: Casper, WY; Sugar Creek, MO; Wood River, IL; El Dorado, AR; Whiting, IN; Yorktown, VA; Texas City, TX.
Statement signed: December 23, 1980.
Basis of claim: As provided in the drawback rate contained in section 22.6(g–1) of the Customs Regulations.
Rate forwarded to Regional Commissioner of Customs: Chicago, June 5, 1981.
Revokes: T.D. 73–342(1) and T.D. 73–342(2).

(C) Company: Archer-Daniels-Midland Co.
Articles: Crude corn oil; refined corn oil; corn germ meal as corn gluten feed.
Merchandise: Corn germ.
Factory: Decatur, IL.
Statement signed: May 27, 1981.
Basis of claim: Used in, with distribution to the products obtained in accordance with their relative value at the time of separation.
Rate forwarded to Regional Commissioners of Customs: Chicago and New Orleans, June 16, 1981.

(D) Company: Baldor Electric Co.
Articles: Electric motors, grinders and buffers.
Merchandise: Cold rolled steel, steel ball bearings and copper wire.
Factories: Fort Smith, AR; St Louis, MO; Columbus, MS; Westville, OK.
Statement signed: December 17, 1980.
Basis of claim: Appearing in.
Rate forwarded to Regional Commissioner of Customs: New Orleans, June 10, 1981.

(E) Company: Banner Gelatin Products Corp.
Articles: Soft elastic gelatin capsules containing one or more medicaments, vitamins and/or minerals or food supplements.
Merchandise: Vitamin E (d-alpha Tocopheryl acetate N.F.), U.S.P.; Vitamin E (dL-alpha Tocopheryl acetate N.F.), U.S.P.; Gelatin, U.S.P.

Factory: Chatsworth, CA.
Statement signed: May 5, 1981.
Basis of claim: Appearing in.
Rate forwarded to Regional Commissioner of Customs: Los Angeles, June 22, 1981.
Revokes: T.D. 75–245–W and T.D. 79–63–A.

(F) Company: Borg-Warner Corporation, Borg-Warner Chemicals.
Articles: Various products containing Dodecy lphenol.
Merchandise: Propylene Tetramer D; Propylene Tetramer M.
Factory: Morgantown, WV.
Statement signed: November 17, 1980.
Basis of claim: Used in.
Rate forwarded to Regional Commissioners of Customs: New York and Houston, July 10, 1981.

(G) Company: Celanese Corp.
Articles: Acetal copolymer pellet.
Merchandise: Acetal copolymer flake.
Factory: Bishop, TX.
Statement signed: November 12, 1980.
Basis of claim: Used in.
Rate forwarded to Regional Commissioner of Customs: New York, June 22, 1981.

(H) Company: Data General Corp.
Articles: Computer systems, computer subsystems and peripheral computer equipment.
Merchandise: Printed circuit board products.
Factories: Southboro, MA; Westbrook, ME; Cary, NC; Portsmouth, NH; Austin, TX.
Statement signed: March 13, 1981.
Basis of claim: Appearing in.
Rate forwarded to Regional Commissioner of Customs: San Francisco, June 17, 1981.
Revokes: T.D. 81–78–J.

(I) Company: Eastman Kodak Co.
Articles: Coupler 351 AC Intermediate.
Merchandise: Para-chloroaniline; thionyl chloride; gamma butyrolactone.
Factories: Kingsport, TN; Batesville, AR.
Statement signed: May 8, 1981.
Basis of claim: Used in.

Rate forwarded to Regional Commissioner of Customs: Baltimore, June 26, 1981.

(J) Company: Eli Lilly and Co., Inc.
Articles: Erythromycin Estolate and Ilosone products.
Merchandise: Erythromycin Thiocyanate.
Factory: Carolina, PR.
Statement signed: December 15, 1980.
Basis of claim: Appearing in.
Rate forwarded to Regional Commissioner of Customs: Miami, June 25, 1981.

(K) Company: Eli Lilly and Co.
Articles: Herbicides.
Merchandise: P-chlorobenzotrifluoride and Dinitro PCBT.
Factory: Lafayette, IN.
Statement signed: February 2, 1981.
Basis of claim: Used in.
Rate forwarded to Regional Commissioner of Customs: Chicago, June 26, 1981.
Revokes: T.D. 80–243–L.

(L) Company: Eli Lilly Industries, Inc.
Articles: Various product formulations of Cephalexin (Keflex).
Merchandise: Cephalexin for pulvules and suspension.
Factory: Caroline, PR.
Statement signed: December 18, 1980.
Basis of claim: Appearing in.
Rate forwarded to Regional Commissioner of Customs: Miami, June 25, 1981.

(M) Company: Essex Group, Inc.
Articles: Electrical wire and cable.
Merchandise: Copper wirebars and copper cathodes.
Factories: Various factories as listed in manufacturer's statement.
Statement signed: February 27, 1981.
Basis of claim: Appearing in.
Rate forwarded to Regional Commissioner of Customs: Chicago, June 12, 1981.

(N) Company: Evans Cooperage Co., Inc.
Articles: Steel drums and steel drum parts.
Merchandise: Steel sheets and coils.
Factory: Harvey, LA.

Statement signed: June 4, 1981.
Basis of claim: Used in, less valuable waste.
Rate forwarded to Regional Commissioner of Customs: New Orleans, June 16, 1981.
Revokes: T.D. 80–200–H.

(O) Company: Food Producers International, Division of Beatrice Foods Co.
Articles: Ice cream toppings, syrups, liquid hot chocolate drink base and fruit for yogurt.
Merchandise: Refined sugar.
Factory: Minneapolis, MN.
Statement signed: December 18, 1980.
Basis of claim: Appearing in.
Rate issued by Regional Commissioner of Customs in accordance with section 22.4(o)(2): Chicago, February 23, 1981.
Revokes: T.D. 77–29–I to cover successorship from Food Producers, Inc.

(P) Company: Monsanto Co.
Articles: Glyphosate Intermediate, Glyphosate Technical; Isopropylamine salt of n-phosphonomethylglycine, and roundup herbicide.
Merchandise: phosphorous acid.
Factories: Luling, LA; Fayetteville, NC.
Statement signed: March 2, 1981.
Basis of claim: Appearing in.
Rate forwarded to Regional Commissioners of Customs: Chicago and New York, June 22, 1981.

(Q) Company: Osmose Wood Preserving Co. of America, Inc.
Articles: Wood preservatives.
Merchandise: Cupric oxide.
Factory: Woodstock, TN.
Statement signed: March 2, 1981.
Basis of claim: Used in.
Rate issued by Regional Commissioner of Customs in accordance with section 22.4(o)(2): New York, July 2, 1981.
Revokes: T.D. 80–243–Q.

(R) Company: Philips ECG, Inc.
Articles: Cathode ray tubes.
Merchandise: Glass bulbs for use in black/white television picture tubes.
Factory: Ottawa, OH.

Statement signed: March 3, 1981.
Basis of claim: Appearing in.
Rate issued by Regional Commissioner of Customs in accordance with section 22.4(o)(2): New York, July 2, 1981.
Revokes: T.D. 78–258–I to cover successorship from GTE Sylvania Inc.

(S) Company: RCA Corp.
Articles: Television picture tubes (kinescopes).
Merchandise: Glass panels.
Factories: Scranton and Lancaster, PA; Marion, IN.
Statement signed: February 4, 1981.
Basis of claim: Appearing in.
Rate forwarded to Regional Commissioner of Customs: Baltimore, June 5, 1981.

(T) Company: SK & F Lab Co., Chemical Div.
Articles: CET-Isothiourea.
Merchandise: 4(5)-hydroxymethyl-5(4)-methylimidazole hydrochloride (CET/Alcohol).
Factory: Guayama, PR.
Statement signed: August 5, 1980.
Basis of claim: Used in.
Rate forwarded to Regional Commissioner of Customs: Miami, June 17, 1981.

(U) Company: Slush Puppie Corp.
Articles: Slush Puppie Neutral base; Slush Puppie flavors.
Merchandise: Liquid refined sugar.
Factory: Cincinnati, OH.
Statement signed: April 1, 1981.
Basis of claim: Appearing in.
Rate forwarded to Regional Commissioner of Customs: New York, June 17, 1981.

(V) Company: Tenneco Chemicals Inc. (A Tenneco Co.).
Articles: Poly Vinyl Chloride Resin.
Merchandise: Vinyl chloride monomer.
Factory: Pasadena, TX.
Statement signed: April 22, 1981.
Basis of claim: Used in.
Rate forwarded to Regional Commissioner of Customs: New York, June 16, 1981.

(W) Company: Tenneco Chemicals Inc. (A Tenneco Co.).
Articles: Poly Vinyl Chloride; Co polymer resins; dispersion resins; Homopolymer resins.
Merchandise: Vinyl chloride monomer.
Factory: Burlington, NJ.
Statement signed: April 22, 1981.
Basis of claim: Used in.
Rate forwarded to Regional Commissioner of Customs: New York, June 17, 1981.
Revokes: T.D. 67–183–I.

(X) Company: Texfi Industries, Inc.
Articles: Textured polyester yarn, dyed and undyed; doubleknit and woven polyester fabrics.
Merchandise: Undyed textured polyester filament yarn; undyed untextured (raw) polyester filament yarn.
Factories: Various factories as listed in manufacturer's statement.
Statement signed: April 28, 1980.
Basis of claim: Appearing in.
Rate forwarded to Regional Commissioner of Customs: Baltimore, June 11, 1981.
Revokes: T.D. 75–208–I.

(Y) Company: Tropical Products, Inc.
Articles: Orange juice from concentrate; frozen concentrated orange juice; concentrated orange juice for manufacturing.
Merchandise: Concentrated orange juice 40–65 Brix.
Factories: Brandenton and Fort Pierce, FL.
Statement signed: August 16, 1978.
Basis of claim: Used in.
Rate forwarded to Regional Commissioner of Customs: Miami, November 22, 1978.
Revokes: T.D. 78–397–X.

(Z) Company: Van Leer Manufacturing Corp.
Articles: Ice cream bar coatings.
Merchandise: Granular refined sugar.
Factory: Jersey City, N.J.
Statement signed: February 12, 1981.
Basis of claim: Appearing in.
Rate forwarded to Regional Commissioner of Customs: New York, June 22, 1981.

(T.D. 81–223)

Cotton Textile Products—Restriction on Entry

Restriction on entry of cotton textile products manufactured or produced in the Philippines

There is published below a directive of July 9, 1981, received by the Commissioner of Customs from the Chairman, Committee for the Implementation of Textile Agreements, concerning restriction on entry of cotton textile products in category 337 manufactured or produced in the Philippines. This directive amends, but does not cancel, that Committee's directive of December 19, 1980 (T.D. 81–135).

This directive was published in the Federal Register on July 15, 1981 (46 FR 36725), by the Committee.

(QUO–2–1)

Dated: August 25, 1981.

WILLIAM D. SLYNE
(For Richard R. Rosettie, Acting Director,
Duty Assessment Division).

U.S. DEPARTMENT OF COMMERCE,
INTERNATIONAL TRADE ADMINISTRATION,
Washington, D.C., July 9, 1981.

Committee for the Implementation of Textile Agreements

COMMISSIONER OF CUSTOMS,
Department of the Treasury,
Washington, D.C.

DEAR MR. COMMISSIONER: This directive further amends, but does not cancel, the directive issued to you on December 19, 1980 by the Chairman, Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton, wool and man-made fiber textile products, produced or manufactured in the Philippines.

Under the terms of the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of August 22 and 24, 1978, as amended, between the Governments of the United States and the

Republic of the Philippines; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended by Executive Order 11951 of January 6, 1977, you are directed to prohibit, effective on July 16, 1981, and for the twelve-month period beginning on January 1, 1981 and extending through December 31, 1981, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textile products in Category 337pt.,[1] produced or manufactured in the Philippines, in excess of 37,560 dozen:[2]

Textile products in Category 337pt., which have been exported to the United States prior to January 1, 1981 shall not be subject to this directive.

Textile products in Category 337pt. which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

A detailed description of the textile categories in terms of T.S.U.S.A. numbers was published in the FEDERAL REGISTER on February 28, 1980 (45 F.R. 13172), as amended on April 23, 1980 (45 F.R. 27463), August 12, 1980 (45 F.R. 53506) December 24, 1980 (45 F.R. 85142) and May 5, 1981 (46 F.R. 25121).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The action taken with respect to the Government of the Republic of the Philippines and with respect to imports of cotton textile products from the Philippines has been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the Federal Register.

Sincerely,

PAUL T. O'DAY,
Chairman, Committee for the
Implementation of Textile Agreements.

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[1] In Category 337, all T.S.U.S.A. numbers except 382.0020, 382.0073, and 382.3329.

[2] The level of restraint has not been adjusted to reflect any imports after December 31, 1980. Charges for the period, January-April 1981, have amounted to 16,300 dozen.

(T.D. 81–224)

Cotton Textile Products—Restriction on Entry

Restriction on entry of cotton textile products manufactured or produced in Pakistan

There are published below directives of July 20 and August 11, 1981, received by the Commissioner of Customs from the Chairman, Committee for the Implementation of Textile Agreements, concerning restriction on entry of cotton textile products in certain categories manufactured or produced in Pakistan. The directives amend, but do not cancel, that Committee's directive of December 19, 1980 (T.D. 81–153).

The directives were published in the Federal Register on July 24 and August 14, 1981 (46 FR 38117 and 46 FR 41129), by the Committee.

(QUO–2–1)

Dated: August 25, 1981.

WILLIAM D. SLYNE
(For Richard R. Rosettie, Acting Director,
Duty Assessment Division).

U.S. DEPARTMENT OF COMMERCE,
INTERNATIONAL TRADE ADMINISTRATION,
Washington, D.C., July 20, 1981.

Committee for the Implementation of Textile Agreements

COMMISSIONER OF CUSTOMS,
Department of the Treasury,
Washington, D.C.

DEAR MR. COMMISSIONER: This directive amends, but does not cancel, the directive issued to you on December 19, 1980 by the Chairman, Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain textile products, produced or manufactured in *Pakistan.*

Effective on July 20, 1981, you are directed to amend eighteen-month levels of restraint established in the directive of December 19, 1980 for Categories 320, 336, 340, and 342 to the following amounts:

Category	*Amended 18-mo level of restraint*	
320	10,000,000	square yards
336	33,113	dozen
340	70,833	dozen
342	101,124	dozen

The actions taken with respect to the Government of Pakistan and with respect to imports of cotton textile products from Pakistan have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, the directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the Federal Register.

Sincerely,

ARTHUR GAREL,
Acting Chairman, Committee for the Implementation of Textile Agreements.

U.S. DEPARTMENT OF COMMERCE,
INTERNATIONAL TRADE ADMINISTRATION
Washington, D.C., August 11, 1981.

Committee for the Implementation of Textile Agreements

COMMISSIONER OF CUSTOMS,
Department of the Treasury,
Washington, D.C.

DEAR MR. COMMISSIONER: On December 19, 1980, the Chairman, Committee for the Implementation of Textile Agreements, directed you to prohibit entry for consumption, or withdrawal from warehouse for consumption, during the eighteen-month period beginning on January 1, 1981 and extending through June 30, 1982 of cotton textile products in certain specified categories, produced or manufactured in Pakistan, in excess of designated levels of restraint. The Chairman further advised you that the levels of restraint are subject to adjustment.[1]

Under the terms of the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977; pursuant to the Bilateral Cotton Textile Agreement of January 4 and 9, 1978, as amended, between the Governments of the United States and Pakistan; and in accordance with the provisions of Executive Order 11651 of March 3, 1972,

[1] The term "adjustment" refers to those provisions of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of January 4 and 9, 1978, as amended, between the Governments of the United States and Pakistan, which provide, in part, that (1) within the aggregate and group limits, specific levels of restraint may be exceeded by designated percentages; (2) these same levels may be increased for carryover and carryforward; and, (3) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement.

as amended by Executive Order 11951 of January 6, 1977, you are directed to increase, effective on August 12, 1981, the eighteen-month level of restraint established for cotton textile products in Category 363 to 29,052,632 numbers.[2]

The actions taken with respect to the Government of Pakistan and with respect to imports of cotton textile products from Pakistan have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the Federal Register.

Sincerely,

PAUL T. O'DAY,
Chairman, Committee for the
Implementation of Textile Agreements.

(T.D. 81-225)

Cotton, Wool, Manmade Fiber Textile Products—Restriction on Entry

Restriction on entry of cotton, wool, manmade fiber textile products manufactured or produced in Colombia

There is published below a directive of June 29, 1981, received by the Commissioner of Customs from the Chairman, Committee for the Implementation of Textile Agreements, concerning restriction on entry of cotton, wool, manmade fiber textile products in certain categories manufactured or produced in Colombia.

This directive was published in the Federal Register on July 1, 1981 (46 FR 34361), by the Committee.

(QUO-2-1)

Dated: August 25, 1981.

WILLIAM D. SLYNE,
(For Richard R. Rosettie, Acting Director,
Duty Assessment Division).

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[2] The level of restraint has not been adjusted to reflect any imports after December 31, 1980.

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U.S. DEPARTMENT OF COMMERCE,
INTERNATIONAL TRADE ADMINISTRATION,
Washington, D.C., June 29, 1981.

Committee for the Implementation of Textile Agreements

COMMISSIONER OF CUSTOMS,
Department of the Treasury,
Washington, D.C.

DEAR MR. COMMISSIONER: Under the terms of the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 14, 1977; pursuant to the Bilateral Cotton, Wool, and Man-Made Textile Agreement of August 3, 1978, as amended, between the Governments of the United States and Colombia; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended by Executive Order 11951 of January 6, 1977, you are directed to prohibit, effective on July 1, 1981 and for the twelve-month period extending through June 30, 1982, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, and man-made fiber textile products, exported from Colobia in the following categories, in excess of the indicated twelve-month levels of restraint:

Category	*12-mo level of restraint*	
310	3,200,000	square yards
320	7,000,000	square yards
435	5,556	dozen
444	4,345	dozen
641	152,074	dozen

In carrying out this directive, entries of cotton, wool, and man-made fiber textile products in the foregoing categories, except Category 310, produced or manufactured in Colombia, which have been exported to the United States on and after July 1, 1980 and extending through June 30, 1981, shall, to the extent of any unfilled balances, be charged against the levels of restraint established for such goods during that twelve-month period. In the event the levels of restraint established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this letter. Cotton textile products in Category 310, which have been exported prior to July 1, 1981 shall not be subject to this directive.

The levels of restraint set forth above are subject to adjustment in the future according to the provisions of the bilateral agreement of August 3, 1978, as amended, between the Governments of the United States and Colombia, which provide, in part, that: (1) with the ap-

plicable group limits of the agreement, specific levels of restraint may be exceeded by designated percentages; (2) these same levels may also be increased for carryover and carryforward up to 11 percent of the applicable category limit; (3) certain consultation levels may be increased within the applicable group limits upon agreement between the two governments; and (4) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement. Any appropriate adjustment under the provisions of the bilateral agreement referred to above be made to you by letter.

A detailed description of the textile categories in terms of T.S.U.S.A. numbers was published in the Federal Register on February 28, 1980 (45 FR 13172), as amended on April 23, 1980 (45 FR 27463), August 12, 1980 (45 FR 53506) December 24, 1980 (45 FR 85142) and May 5, 1981 (46 FR 25121).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The actions taken with respect to the Government of Colombia and with respect to imports of cotton, wool, and man-made fiber textile products from Colombia have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the Federal Register.

Sincerely,

PAUL T. O'DAY,
Chairman, Committee for the
Implementation of Textile Agreements.

(T.D. 81-226)

Manmade Fiber Textile Products—Restriction on Entry

Restriction on entry of manmade fiber textile products manufactured or produced in India

There is published below a directive of July 9, 1981, received by the Commissioner of Customs from the Chairman, Committee for the Implementation of Textile Agreements, concerning restriction on entry of manmade fiber textile products in category 666 manu-

factured or produced in India. This directive amends, but does not cancel, that Committee's directive of December 16 1980, (T.D. 81–132).

This directive was published in the Federal Register on July 15, 1981 (46 FR 36725), by the Committee.

(QUO–2–1)

Dated: August 25, 1981.

WILLIAM D. SLYNE,
(For Richard R. Rosettie, Acting Director,
Duty Assessment Division).

U.S. DEPARTMENT OF COMMERCE,
INTERNATIONAL TRADE ADMINISTRATION,
Washington, D.C., July 9, 1981.

Committee for the Implementation of Textile Agreements

COMMISSIONER OF CUSTOMS,
Department of the Treasury,
Washington, D.C.

DEAR MR. COMMISSIONER: This directive amends, but does not cancel, the directive of December 16, 1980, from the Chairman of the Committee for the Implementation of Textile Agreements which directed you to prohibit entry during the twelve-month period which began on January 1, 1981 and extends through December 31, 1981 of cotton, wool and man-made fiber textile products in certain specified categories, produced or manufactured in India, in excess of designated levels of restraint.

Under the terms of the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of December 30, 1977, as amended, between the Governments of the United States and India; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended by Executive Order 11951 of January 6, 1977, you are directed to prohibit, effective on July 9, 1981 and for the twelve-month period beginning on January 1, 1981 and extending through December 31, 1981, entry into the United States for consumption and withdrawal from warehouse for consumption of man-made fiber textile products in Category 666, produced or manufactured in India, in excess of 1,025,641 pounds.[1]

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[1] The level of restraint has not been adjusted to reflect any entries after December 31, 1981.

The actions taken with respect to the Government of India and with respect to imports of man-made fiber textile products from India have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the Federal Register.

Sincerely,

PAUL T. O'DAY,
Chairman, Committee for the Implementation of Textile Agreements.

(T.D. 81-227)

United States-Canada Albacore Tuna Treaty

Published below is the text of the "Treaty Between the Government of the United States of America and the Government of Canada on Pacific Coast Albacore Tuna Vessels and Port Privileges" entered into force in Ottawa at 2:25 p.m., Eastern Daylight Time, on July 29, 1981. The treaty is an exception to the Nicholson Act, codified as title 46, United States Code, section 251(a), second sentence. Among other things, the treaty permits Canadian fishing vessels to land their catches of albacore tuna in the ports of the United States named in Annex B. The tuna may be landed only for the purposes described in the treaty.

TREATY BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF CANADA ON PACIFIC COAST ALBACORE TUNA VESSELS AND PORT PRIVILEGES

The Government of the United States of America and the Government of Canada,

Desiring to cooperate in matters concerning the albacore tuna fishery off the Pacific Coast of the United States and Canada,

Desiring to benefit the fishing industries involved in that fishery, and

Taking into account the deliberations of the Third United Nations Conference on the Law of the Sea in the field of fisheries,

Have agreed as follows:

ARTICLE I

Without prejudice to the respective juridical positions of both Parties regarding highly migratory species of tuna, each Party shall:

(*a*) ensure that all its vessels engaged in fishing for albacore tuna in waters under the fisheries jurisdiction of the other Party shall do so in accordance with this Treaty;

(*b*) permit fishing vessels of the other Party to fish for albacore tuna in waters under its fisheries jurisdiction beyond twelve nautical miles of the baselines from which the territorial sea is measured, in accordance with Annex "A" to this Treaty and subject to other applicable laws and regulations.

ARTICLE II

Vessels of the United States of America fishing pursuant to this Treaty shall be authorized to enter the Canadian ports listed in Annex "B" to this Treaty and to use Canadian facilities and services, subject to compliance with applicable customs, navigation, safety, environmental and other laws and regulations pertaining to port privileges, and payment of applicable albacore tuna landing fees provided that such fees do not discriminate according to nationality, for the following purposes:

(1) to land their catches of albacore tuna without the payment of duties and

(*a*) trans-ship them in bond under customs supervision to any port of the United States of America; or

(*b*) sell them for export in bond; or

(*c*) sell them locally on payment of the applicable customs duty; and

(2) to obtain fuel, supplies, repairs and equipment on the same basis as albacore tuna vessels of the other Party.

ARTICLE III

Canadian vessels fishing pursuant to this Treaty shall be authorized to enter the United States ports listed in Annex "B" to this Treaty and to use United States facilities and services, subject to compliance with applicable customs, navigation, safety, environmental, and other laws and regulations pertaining to port privileges, and payment of applicable albacore tuna landing fees provided that such fees do not discriminate according to nationality, for the following purposes:

(1) to land their catches of albacore tuna without the payment of duties and

(*a*) trans-ship them in bond under customs supervision to any port of Canada; or

(*b*) sell them for export in bond; or

(*c*) sell them locally on payment of the applicable customs duty; and

(2) to obtain fuel, supplies, repairs and equipment on the same basis as albacore tuna vessels of the other Party.

ARTICLE IV

Neither Party shall, pursuant to its fisheries legislation, prohibit the importation into its territory of Pacific albacore tuna

and albacore tuna products from the other Party as a consequence of a dispute arising in other fisheries.

ARTICLE V

1. Vessels of each Party which are not in compliance with this Treaty are subject to enforcement action by the other Party when engaged in fishing for Pacific albacore tuna in waters under the fisheries jurisdiction of the other Party.

2. Arrested vessels and their crews shall be promptly released, subject to such reasonable bond or other security as may be determined by the court.

3. Enforcement actions under this Treaty shall not include imprisonment.

4. In the case of seizure and arrest of a vessel by the authorities of one Party, notification shall be given promptly through diplomatic or consular channels informing the other Party of the action taken and of any penalties subsequently imposed.

ARTICLE VI

1. Either Party may at any time request consultations on the interpretation or application of this Treaty. Such consultations should commence as soon as practicable but in any case not later than sixty days from the date of receipt of the request for consultations, unless otherwise agreed by the Parties.

2. In the event of a dispute arising between the Parties concerning the interpretation or application of this Treaty, the Parties shall consult with a view to resolving the dispute by negotiation.

ARTICLE VII

The Annexes may be amended by the President of the United States and the Government of Canada through an Exchange of Notes.

ARTICLE VIII

This Treaty shall enter into force upon the exchange of instruments of ratification at Ottawa. After two years from the date of entry into force, either Party may give written notice to the other Party to terminate this Treaty. The Treaty shall terminate on December 31 of the calendar year following that in which such notice was received by the other Party.

In witness whereof, the undersigned, being duly authorized by their respective Governments, have signed this Treaty.

Done at Washington in duplicate, in the English and French languages, both versions being equally authentic, this Twenty-sixth day of May, 1981.

For the Government of the United States of America:

WILLIAM CLARK

For the Government of Canada:

PETER TOWE

ANNEX A

1. a. Each Party agrees to provide annually to the other Party a list of its fishing vessels which propose to fish albacore tuna off the coast of the other Party. The list will include (1) vessel name, (2) home port, (3) radio call sign, (4) fishing vessel registration number, and (5) captain or operator's name, if known.

b. Each Party may provide the other Party with additions or deletions to its list at any time.

c. As soon as possible after receipt, and subject to paragraph 1(d) below, the receiving Party shall satify itself that the list received meets the criteria of paragraph 1(a) and shall so inform the other Party in order to enable the albacore fishery to proceed pursuant to this Treaty.

d. Should, due to serious or repeated fisheries violations or offenses, one Party object to the inclusion of a particular vessel on the list of the other Party, the two Parties shall consult. In this event, actions pursuant to paragraph 1(c), with regard to other vessels shall not be delayed. Following consultations, each Party shall notify its vessels which both Parties agree shall not be included on the lists referred to in paragraph 1(c).

2. If required by either Party, each vessel shall, upon entering and at least 24 hours prior to leaving the fishing zone of such Party, so inform the appropriate authorities and provide the vessel name, radio call sign and captain or operator's name.

3. When in the fishing zone of the other Party, each vessel shall have its name and radio call sign prominently displayed where they will be clearly visible both from the air and from a surface vessel.

4. Vessels of both Parties shall keep accurate log records while fishing pursuant to this Treaty.

5. In order that better information on the stocks of albacore tuna which migrate off the west coasts of the United States and Canada may be obtained, each vessel engaged in fishing pursuant to this Treaty shall provide to its government statistics and other scientific information on its operations in the fishing zone of the other Party. Each Party shall provide to the other Party twice yearly such information and in particular the amount (number and weight) of albacore tuna caught by its vessels in waters under the fisheries jurisdiction of the other Party. Other specific information to be provided, as well as the forms and procedures for providing such information, shall be agreed upon by the two Parties.

ANNEX B

1. Fishing vessels of the United States of America shall, pursuant to Article II, be authorized to enter the following ports located in Canada:

Port Hardy.
Prince Rupert.
Victoria.
Ucluelet.

2. Canadian fishing vessels shall, pursuant to Article III, be authorized to enter the following ports located in the United States of America:

Astoria.
Bellingham.
Coos Bay.
Crescent City.

ERRATUM

In CUSTOMS BULLETIN, Volume 15, No. 31, in T.D. 81–191, on page 10, delete the discontinuance entry for Alto's Express, Inc. Their 1979 bond is to remain in effect.

Decisions of the United States Court of Customs and Patent Appeals

Appeal No. 81-25

ASG INDUSTRIES, INC., ET AL. *v.* UNITED STATES

1. ORDER OF COURT OF INTERNATIONAL TRADE VACATED AND CASE REMANDED.

The order of the Court of International Trade dated April 24, 1981, which granted the government's motion to dismiss and remanded the case to the Secretary of Commerce is *vacated* and the case *remanded* to that court for further proceedings consistent with the opinion. Appellants' motion for an injunction to stay all proceedings is *dismissed* as moot. The government's cross-motion to dismiss the appeal or, in the alternative, for summary affirmance of the order of the Court of International Trade, is *denied*.

Before MARKEY, Chief Judge, RICH, BALDWIN, MILLER, and NIES, Associate Judges.

RICH, *Judge*.

THE APPEAL

[1] This appeal is from an "order" of The United States Court of International Trade (formerly the United States Customs Court), dated April 24, 1981, which was accompanied by a memorandum of even date. The order was entered after a hearing, both parties filing briefs, on March 18, 1981, on remand of the case from this court pursuant to its decision in *ASG Industries, Inc.* v. *United States*, 67 CCPA —, C.A.D. 1237, 610 F. 2d 770 (1979), which will be referred to as the "first appeal." The hearing was limited to consideration of the Government's motion to dismiss.

The basic questions involved in the case are (1) whether the West German Government provided a bounty or grant to German manufacturers of float glass imported into the United States, so as to give rise to a countervailing duty requested by appellants who are domestic manufacturers and wholesalers of float glass, and (2) the net amount

of such bounty or grant. On the first appeal, this court held that certain benefits bestowed by West Germany upon float glass manufacturers *were* bounties or grants. However, the *net amount* of the bounty or grant, within the meaning of 19 USC 1303 (a) (1), upon which a countervailing duty, if any, would be based, had not been determined.

After much discussion in the opinion with respect to the proper procedure for determining the net amount of the bounty or grant, this court concluded

> * * * that a trial *de novo* is indicated in this case so that the merits of the issue of the amount of the net bounty herein involved can be *fully developed.* [Emphasis ours.]

This court therefore ruled as follows:

> In view of all the foregoing, we *reverse* the judgment of the Customs Court [which had affirmed an administrative decision that there was no bounty or grant] and *remand* for further proceedings consistent with this opinion.

In the proceedings on remand, appellants and the Government took different views as to the interpretation of this court's opinion and of what should be done on remand. The Government position was that the *only* question to be decided was whether there were any "offsets" to the gross amounts of the West German Government's payments to the German manufacturers, the amount of which payments appears not to be in dispute. Government counsel stated that the Government had no evidence of any offsets and would not attempt to prove any, wherefore there was nothing for the court to decide, and moved below to dismiss the case, requesting, however, that the court do so "with a judgment ordering the administering authority of the countervailing duty law (19 U.S.C. §1303) to determine, as certain or estimate the net amount of the bounties or grants * * * and to levy a countervailing duty equal to such net bounty or grant on such importation of float glass."

In arguing against the Government's aforesaid motion to dismiss, appellants' counsel contended that the government position was not in harmony with this court's remand for a trial *de novo* in C.A.D. 1237, the first appeal, asked denial of the motion to dismiss, and made two suggestions. The first was that the Court of International Trade should retain its control over the determination of net bounty and "remand" the case to the Commerce Department (to which jurisdiction had been transferred[1] from Treasury) to determine or estimate the net bounties or grants consistently with C.A.D. 1237 *and report back* so that the court could consider the findings and issue its final

[1] The effective date of that transfer was January 2, 1980. *See* 44 Fed. Reg. 69273 (1979).

order. The second was that the court receive expert testimony and or supplemental briefing before determining the net amount. It submitted a proposed order embodying only the first suggestion.

In its April 24, 1981, order, here on appeal, the court wholly adopted the Government's position that it had nothing to decide, granted the motion to dismiss and, at the same time, "remanded" the case to the Secretary of Commerce, directing that he or his delegate (1) ascertain and determine or estimate the net amount of the bounties or grants "without deducting any offsets" and (2) direct the Customs officers to assess countervailing duties "in the net amount equal to said bounties or grants." Appellants' present appeal from that order was filed in this court on June 22, 1981.

THE MOTIONS

The case is brought up at this time by three motions.

(1) June 29, 1981, appellants filed a "Motion for an Injunction Pending Appeal." They ask this court

> * * * for an order enjoining, pending the final resolution of this appeal, the Secretary of Commerce and his successors, agents, and assigns from issuing or publishing any countervailing duty order with respect to float glass from the Federal Republic of Germany or from complying with the directives contained in the order of the Court of International Trade of April 24, 1981 (Slip Op. 81–34).

(2) July 13, 1981, the Government, appellee, along with an opposition to appellants' motion, countered with a motion to dismiss the present appeal "on the grounds that appellants obtained a favorable judgment from the court below and thus are not aggrieved parties."

(3) In the alternative, the Government "requested"

> * * * that the court summarily affirm the decision and judgment of the Court of International Trade, pursuant to Rule 5.12 [CCPA Rules], as this case is of such a character as not to require oral argument or briefs and may be decided on the record.

We treat that as a motion for a summary affirmance of the order now on appeal.

DECISION

In the course of arguing these three motions through extensive briefs and attached appendices, the parties have, inevitably, argued the merits of the underlying appeal, fully expounding their views, pro and con, on the correctness of the action taken on remand and complained of by appellants. We see no reason to review these argu-

ments again at a later date, which course would delay final resolution of this litigation by at least several months. In the interests of justice, of judicial economy, and especially of the expeditious disposition of litigation, we accept the Government's invitation to summarily decide the appeal [2] at the same time that we decide the motions. For the further reasons hereinafter set forth, our disposition is as follows:

1. The appealed order of April 24, 1981, is *vacated.*
2. Appellants' motion for an injunction is *dismissed* as moot.
3. The Government's cross-motion to dismiss the appeal is *denied.*
4. The Government's request for summary affirmance of the appealed order is *denied.*

OPINION

I

With respect to the order dismissing the action and "remanding" this matter to the Secretary of Commerce,[3] we are vacating it because it is not in accord with this court's decision and remand of November 29, 1979, C.A.D. 1237, to conduct a trial *de novo* "so that the merits of the issue of the amount of the net bounty herein involved can be fully developed." It was this court's intention that such full development of the net bounty issue should take place in the court, not that it be turned over with no restraint whatsoever to the administering authority, now the Commerce Department.

We are aware that with respect to cases arising after January 1, 1980, review of countervailing duties is not to be by trial *de novo* but, as the Government recognizes, this case is to be governed by the "old law" since it is a case commenced prior to January 1, 1980.

We have to disagree with the Government's interpretation of this court's opinion that the only matter to be considered on remand was whether or not there were "offsets" to be deducted from the gross amount of the bounties or grants. Since the appealed action was based on the Government's erroneous construction, it was not in accord with the remand. We point out that the opinion, although it discussed deductions, said that "all relevant circumstances are to be taken into account." Appellants have indicated specific matters they wish to have taken into account in a judicial proceeding.

The purpose of our present action in vacating the appealed order is to give appellants the trial *de novo* which this court decreed by the

[2] Under CCPA Rule 5.12 this court may, *sua sponte*, conclude that a case is of such character as not to require oral argument or briefs and decide it on the record. Here, however, we have briefs fully discussing the issues. *See* 28 U.S.C. 2106, 2601(c) and *Clayton Chemical & Packaging Co.* v. *United States*, 383 U.S. 821 (1966).

[3] This case was originally brought to review a decision of the Secretary of the Treasury whose jurisdiction has been transferred to the Secretary of Commerce by P.L. 96-39 and E.O. 12188, 45 F R 989 (1980).

remand, which was frustrated by the granting of the Government's motion to dismiss. When the argument was presented on that motion, appellants' counsel was asked by the court, during oral argument, to file a memorandum "as to the applicability of section 516(d) as against 751." Such a memorandum was filed in which counsel expressed (page 4, footnote 2 and related text) his views of what, as a practical matter, the court could do in determining the net amount of bounty or grant. His concerns appear to reside in the "quantification methodology" used to determine net bounty or grant and to be of an accounting nature. Appellants are entitled, in our view, to their day in court to present their case, whatever it may be, on what the net bounty or grant is or, at least, on the method by which it is to be determined, and to a decision thereon by the Court of International Trade. The only matter considered and ruled on in the March 18, 1981, hearing on remand, as shown by the stenographic transcript of the proceeding and the briefs we have before us, was the Government's motion to dismiss, which was granted. Appellants have not had the opportunity, which this court intended them to have, to present their case. If they have any evidence to produce in support of their contentions, they are entitled to introduce it.

II

Appellants' motion in this court for an injunction to stay all proceedings pursuant to the order of April 24, 1981, is rendered moot by our present vacating of that order. Appellants, in asking for the stay, assumed we would not decide their appeal from that order until some later date and that the order would, meanwhile, remain in effect. Since we are deciding the appeal now, the reason for the motion has been removed. We assume that no administrative action will be taken to determine net bounty or grant while that question remains *sub judice*.

Appellants' brief on this motion (footnote 1) advises that administrative action is suspended, until decision of this motion, by agreement of counsel. Since the vacating of the order removes the authority for action, the matter is no longer a matter for counsel to decide.

III

The Government's cross-motion for dismissal of the appeal, which appeal we are hereby deciding, is denied as lacking merit. The Court of International Trade did not carry out this court's remand for a trial *de novo* and dismissed appellants' case. Appellants are, therefore, aggrieved parties having a right to appeal.

IV

As the Government's motion papers remind us, this case is entitled to a preference under 28 U.S.C. 2602(a).[4] Summary judgment under all the circumstances of this case, where all the issues involved in the appeal have been fully aired in the motion papers, is most appropriate. We disagree with the Government, however, for reasons stated above, that the appealed orders should be affirmed. The motion for a summary affirmance is therefore denied.

The order of the Court of International Trade is *vacated* and the case is *remanded* for further proceedings consistent herewith.

(C.A.D. 1268)

No. 80–38, Farrell Lines, Inc. as Successor to American Export Lines, Inc. *v.* The United States

1. Appeal From Dismissal for Lack of Jurisdiction—Reversed and Remanded.

Appeal from judgment of the United States Customs Court (hereinafter referred to as the Court of International Trade) in *American Export Lines, Inc.* v. *United States*, — Cust. Ct. —, C.D. 4864 (1980), dismissing for lack of jurisdiction an action by American Export Lines, Inc., to recover duties assessed on repairs made overseas to its ship, the C.V. LIGHTNING. Reversed and remanded.

2. Where Confusion Over Method of Obtaining Administrative Review of Decision—Dismissals Should Be Granted Sparingly.

Where confusion existed for both parties over proper method of obtaining administrative review of decision to assess foreign repair duties, particularly where the party seeking relief has relied upon Customs officials for guidance, *dismissals should be granted sparingly.*

3. On Motion To Dismiss—Uncontroverted Factual Allegations Accepted as True.

In considering a motion to dismiss, all uncontroverted factual allegations in the complaint, along with the supporting affidavits of record, should be accepted as true.

4. Notice of Liquidation.

The record shows that there was a notice of liquidation here, so

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[4] 28 USC 2602(a) reads as follows:
(a) Every proceeding in the Court of Customs and Patent Appeals arising under section 516 of the Tariff Act of 1930, as amended, shall be given precedence over other cases on the docket of such court, except as provided for in paragraph (b) of this section, and shall be assigned for hearing at the earliest practicable date and expedited in every way.

that subparagraph 19 U.S.C. 1514(c)(2)(A) clearly applies and, thus, subparagraph (2)(B) does not apply.

5. PETITION FOR REVIEW OF DENIAL OF APPLICATION.

There appears to be no reason why, in a case where an application for relief from duties on equipment and repairs to American vessels has been followed by a liquidation, a petition for review of denial of the application (implied by the liquidation) cannot be considered under 19 CFR 4.14(k).

6. PROTEST LIMITATION PERIOD TOLLED.

Rather than elevate form over substance, held that ninety-day period of limitations for filing a protest to liquidation was tolled from date of petition for cancellation of November 5, 1975, until final notice, dated July 28, 1977, of denial of petitioner's supplemental petition.

(F. 2d)

FARRELL LINES, INC. AS SUCCESSOR TO AMERICAN EXPORT LINES INC., APPELLANT *v.* UNITED STATES, APPELLEE

No. 80–38

United States Court of Customs and Patent Appeals, August 20, 1981, Appeal from United States Court of International Trade, C.D. 4864.

[Reversed and Remanded.]

Nicholas H. Cobbs, attorney for appellant.

Thomas S. Martin, Acting Asst. Atty. General, *David M. Cohen*, Director, *Joseph I. Liebman*, Attorney-in-Charge, *Barbara M. Epstein*, of counsel, attorneys for appellee.

[Oral argument on May 4, 1981 by *Nicholas H. Cobbs* for appellant and *Barbara M. Epstein*, for appellee.]

Before MARKEY, *Chief Judge*, RICH, BALDWIN, MILLER, AND NIES, *Associate Judges*.

MILLER, *Judge*.

[1] This appeal is from the judgment of the United States Customs Court (hereinafter referred to as the Court of International Trade) in *American Export Lines, Inc.* v. *United States*, — Cust. Ct. —, C.D. 4864 (1980), dismissing for lack of jurisdiction an action by American Export Lines, Inc. ("AEL"), to recover duties assessed on repairs made overseas to its ship, the C. V. *Lightning*. We reverse and remand.

As described by the Court of International Trade, the repairs were necessitated by an unexpected grounding of the ship as it was departing New York for Europe. Although the ship was freed in a short time, its master anchored it for inspection. After inspection by both the crew and an American Bureau of Shipping engineer, it was found to be seaworthy, and it continued on its voyage. After docking

at Bremerhaven, West Germany, there was another inspection for damage, as a result of which an American Bureau of Shipping surveyor in Bremerhaven found the ship unseaworthy and required that repairs be made before he would authorize a return voyage. After repairs were made in Amsterdam in the amount of $346,850.13, the ship returned to New York. Pursuant to section 466(a) of the Tariff Act of 1930, 19 U.S.C. 1466,[1] duties in the amount of $153,842.14 were assessed.

AEL contends that the casualty suffered by the C. V. *Lightning* in running aground falls within the remission or refund provision of section 466. The Government denies that the grounding of the ship constituted a casualty within the regular course of her voyage and contends that AEL does not qualify for the remission or refund of duties authorized by section 466. Primarily at issue here are the Government's argument that AEL failed to file a protest within ninety days after the posting of notice of liquidation and the holding of the Court of International Trade that the filing by AEL of its summons with the court was not timely.

As found by the Court of International Trade, the following is a chronological list of filings and responses between the parties:

June 27, 1974—Vessel repair entry filed by AEL.
July 1, 1974—Application for relief from duties on ship's foreign repairs (no log abstract as required by 19 CFR 4.14(f) but Coast Guard report and master's statement included).[2]
August 20, 1975—Final itemized repair cost invoices filed by AEL.
October 24, 1975—Entry liquidated (Bulletin Notice showing liquidation this date in record); bill for $153,842.14 duties sent to AEL.
November 5, 1975—AEL letter to Commissioner of Customs, Washington, D.C., requesting cancellation of the duties.
November 6, 1975—Copy of November 5 letter sent to Customs officials in New York. Cover letter refers to said letter as "petition for cancellation" and requests that it be forwarded to Customs Service Headquarters in Washington, D.C.
January 7, 1976—AEL letter to Commissioner of Customs asking for response to the November 5 letter requesting "cancellation" of duties.

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[1] The statute provides for a duty of 50 per centum to be assessed on the cost of repairs and equipment and parts therefor in a foreign port for a ship, documented under the laws of the United States, engaged or intended to engage in foreign or coasting trade; further, that if the owner or master furnishes good and suf t ficient evidence that the ship, while in the regular course of her voyage, was compelled by stress of weathe- or other casualty to put into such foreign port for repairs in order to be safe and seaworthy to reach her porr of destination, the Secretary of the Treasury may remit or refund the duties. Compensation paid to members of the regular crew in connection with installation of equipment and making of repairs is not included in the cost thereof.

[2] AEL states that it never received a response to its application. The Government was unable to produce a copy, and an affidavit from Ross Griffin, Chief of the Carrier Control Branch, Inspection and Control Division, New York Seaport Area, United States Customs Service, merely states his "belief" that such response was given.

February 5, 1976—Reply from Carrier Rulings Branch of Customs Service Headquarters stating there is no record of receipt of the November 5 letter and requesting that AEL direct its petition "to this office through the involved Customs office."

February 9, 1976—AEL letter to Carrier Rulings Branch stating that its "petition" of November 5, 1975, was, in fact, directed "to your office through the U.S. Customs Service here in New York." Bill for duties attached, and "If, however, there is something additional you require from us please do not hesitate to so advise." [3]

January 14, 1977—Letter from Headquarters, Customs Service, Washington, D.C., to Regional Commissioner of Customs, New York, denying "petition" of AEL "seeking remission of duties".[4]

April 7, 1977—AEL "supplemental petition for relief" and containing supplemental information sent to Headquarters, Customs Service, through the Area Director of Customs, New York.

July 28, 1977—Letter from Headquarters, Customs Service, Washington, D.C., to Area Director of Customs, New York, stating "Relief is denied" and giving a more complete analysis than the January 14, 1977, letter.

September 27, 1977—Formal protest filed by AEL, referring to decision of July 28, 1977.

October 7, 1977—Formal protest denied because "Original Customs decision reviewed and found to be correct".

January 30, 1978—AEL files summons with Customs Court.

In addition to the above, affidavits filed by AEL in opposition to the government's motion to dismiss establish, without contravention, that numerous informal meetings between AEL's representatives and Customs officials took place from June of 1974 to January 24, 1977, during the course of which Customs officials (including the Regional Counsel for the Eastern Division) advised that AEL had ninety days in which to appeal the denial of AEL's petition for remission of duties by filing a formal protest; further, that at no time were they advised that AEL's formal protest was not timely [5] or that the time for filing

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[3] There is no showing that the Customs Service ever indicated a deficiency of documentation in the July 1, 1974, application, and AEL asserts that the ship's log abstract would have contained no information of value to the Customs Service, "since any entry pertaining to the grounding would merely note the time and place of the occurrence and duplicate the information contained in the Master's statement." Under such circumstances and contrary to the view of the Court of International Trade that failure to file a log abstract within ninety days of entry voided AEL's application for relief, we are persuaded that the requirement for a log abstract was waived. In any event, the case turns on what happened after liquidation.

[4] The Court of International Trade states that the denial related to "another letter to Customs, repeating the information contained in the November 1975 letters, together with a request for the cancellation of the vessel repair duties." However, the January 14, 1977, letter refers to the Regional Commissioner's "letter of March 12, 1976, submitting a petition filed by American Export Lines, Inc., under section 4.14(k) of the Customs Regulations." It appears that the "petition" referred to was a letter ("petition for cancellation") from AEL to the Commissioner of Customs, Washington, D.C., dated March 4, 1976, which repeated the substance of AEL's November 5, 1975, letter.

[5] There is support for such a statement on the face of the denial of AEL's formal protest, with the box checked for "Original Customs decision reviewed and found to be correct" and the box labelled "Untimely filed" left blank.

a formal protest had expired or that a formal protest should have been filed within ninety days following liquidation on October 24, 1975.

[2] We note that, in reaching a decision on this case, the Court of International Trade said: "It cannot be disputed that confusion existed for both parties as to the proper method to obtain administrative review of the decision to impose assessment of foreign repair duties." In such a situation, particularly where the party seeking relief has relied upon Customs officials for guidance, *dismissals should be granted sparingly. Dann* v. *Studebaker-Packard Corp.*, 288 F. 2d 201, 215–16 (6th Cir. 1961); *Kingwood Oil Co.* v. *Bell*, 204 F. 2d 8, 12–13 (7th Cir. 1953). **[3]** All uncontroverted factual allegations in the complaint, along with the supporting affidavits of record, should be accepted as true.[6] *See Scheuer* v. *Rhodes*, 416 U.S. 232, 236 (1974); *Smith* v. *Gross*, 604 F. 2d 639, 641 n. 1 (9th Cir. 1979); *O'Connor* v. *Yezukevicz*, 589 F. 2d 16, 18 (1st Cir. 1978); *Stern* v. *United States Gypsum, Inc.*, 547 F. 2d 1329, 1332 (7th Cir.), *cert. denied*, 434 U.S. 975 (1977); *Garrett* v. *Bamford*, 538 F. 2d 63, 65 (3d Cir.), *cert. denied*, 429 U.S. 977 (1976).

Without citation to any authority, the Court of International Trade held that the decision of the Customs Service denying AEL's petition for remission of duties was not subject to protest under 19 U.S.C. 1514(c)(2)(B).[7] **[4]** However, the record shows that there was a notice of liquidation here, so that subparagraph (2)(A) clearly applies and, thus, subparagraph (2)(B) does not apply. Moreover, in 19 U.S.C. 1466, *supra* note 1, the Congress established an administrative procedure, implemented in detail by Customs Regulation 19 CFR 4.14, whereby the owner or operator of a vessel may apply for relief (remission or refund) from duties in accordance with the authority of the Secretary of the Treasury and may petition the Commissioner of Customs for review of the district director's decision on the application. This court has held that Congress intended thereby to confer upon the Secretary the exclusive and final authority to act on such a petition and that the Court of International Trade is *without jurisdiction* over his action. *Waterman Steamship Corp.* v. *United States*, 30 CCPA 119, C.A.D. 223 (1942). *See* Sturm, *Customs Law and Administration* § 56.3 (1980). As the Court of International Trade pointed out, it appears that this procedure was designed to

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[6] Although not so labelled by the Court of International Trade, the Government's motion plus affidavits of both parties could well be considered a motion for summary judgment. In such a case, the underlying facts contained in the affidavits must be viewed in the light most favorable to the party opposing the motion. *United States* v. *Diebold, Inc.*, 369 U.S. 654 (1962).

[7] 19 U.S.C. 1514(c)(2) provides, in pertinent part:

> (2) A protest of a decision, order, or finding described in subsection (a) of this section shall be filed with such Customs officer within ninety days after but not before—
> (A) notice of liquidation or reliquidation, or
> (B) in circumstances where subparagraph (A) is inapplicable, the date of the decision as to which protest is made.

avoid unnecessary liquidations. **[5]** However, there appears to be no reason why, in a case where an application has been followed by a liquidation, a petition for review of denial of the application (implied by the liquidation as recognized by the Government in its brief) cannot be considered under 19 CFR 4.14(k) of the regulation.[8] Indeed, that is precisely the procedure followed in this case, and both the filing of the petition and supplemental petition and their consideration appear to have been in the utmost good faith of both AEL and the Customs Service. Now, however, the Government urges, in effect, that, because no protest to the liquidation of October 24, 1975, was filed within ninety days, the petition and supplemental petition for review of the district director's decision and their consideration by the Customs Service amounted to a charade.

[6] Rather than thus to elevate form over substance, we hold that the ninety-day period of limitations for filing a protest to the liquidation of October 24, 1975, was tolled [9] from the date of the petition for cancellation of November 5, 1975, until the notice, dated July 28, 1977, of denial of AEL's supplemental petition.[10] *Cf. Schering Corp.* v. *United States*, — CCPA —, — C.A.D. 1250, 626 F. 2d 162, 166 n.8 (1980) (unavailability of entry papers does not void an otherwise valid liquidation, but tolls the liquidation until entry papers become available for examination). We agree with AEL that tolling should run until final agency action on its supplemental petition, which elicited a more complete analysis than that provided by the Customs Service in its January 14, 1977, denial of the petition.

Since, under tolling, only seventy-three days of the ninety-day period of limitations for filing a protest had expired when AEL filed its formal protest on September 27, 1977, the protest was timely. Denial of the formal protest was under date of October 7, 1977, and filing of the summons with the Court of International Trade on

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[8] Subparagraph (k) provides, in pertinent part:

> The owner or operator of the vessel involved * * * may file with the district director a petition addressed to the Commissioner of Customs for a review of the district director's decision on an application claiming relief under section 3115, Revised Statutes, as amended [19 U.S.C. 1466(d)] * * *. Such petition shall be filed within 30 days from the date of the notice of the district director's decision * * *. When such a petition has been filed, the district director shall immediately transmit both copies thereof and the entire file to Headquarters, U.S. Customs Service, together with any comments he may desire to submit. When the Headquarters, U.S. Customs Service decision has been received the entry shall be liquidated in accordance therewith.

[9] "The running of the statue of limitations may be suspended by causes not mentioned in the statue itself." *Braun* v. *Saucrwine*, 77 U.S. (10 Wall.) 218, 223 (1869); *Collins* v. *Woodworth*, 109 F. 2d 628, 629 (6th Cir. 1940).

[10] See the following table:

Action	*Lapsed time of 90-d period for filing protest (days)*
Liquidation, 10/24/75	
Petition for cancellation, 11/5/75	12
Denial of supp', petition, 7/28/77	
Formal protest file, 9/27/77	61
Total lapsed time of 90-d period	73

January 30, 1978, was well within the 180-day period for doing so, as provided by 28 U.S.C. 2631(a) (1976).

We note that the Court of International Trade agreed with one of AEL's arguments, namely: that the November 5, 1975, letter amounted to a timely filed "protest." In doing so, it recognized, properly, that it is "basic to customs law that protests are not to be strictly construed." However, that was only a Pyrrhic victory for AEL, because the Court of International Trade then held that the letter of January 14, 1977, from Headquarters, Customs Service, Washington, D.C., constituted a denial of the "protest" and began the running of the 180-day period for filing a summons with the court; that the letter of July 28, 1977, merely reaffirmed the letter of January 14, 1977, and "did not cause the 180-day statutory period to commence again";[11] and, finally, that the summons filed January 30, 1978, was, therefore, untimely. Our principal difficulty with this approach is that both parties consistently and in good faith treated the letters from AEL as a valid petition for remission ("cancellation") in all of their dealings, and the formal protest of September 27, 1977, was treated as a timely protest by both parties.[12]

In view of the foregoing, the judgment of the Court of International Trade must be reversed and the case remanded for further proceedings consistent with this opinion.

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[11] 19 U.S.C. 1514(b)(1) (1976) provides: "only one protest may be filed for each entry of merchandise." There is no similar provision with respect to petitions for review of the denial of an application for remission or refund of duties.

[12] AEL has argued, *inter alia*, for relief under the theory of equitable estoppel. However, "[E]quitable estoppel, even if available in cases involving the Government in its proprietary capacity, is not available against the Government in cases involving the collection or refund of duties on imports." *Air-Sea Brokers, Inc.* v. *United States*, 66 CCPA —, —, C.A.D. 1222, 596 F. 2d 1008, 1011 (1979).

United States Court of International Trade

Decisions of the United States Court of International Trade

(Slip Op. 81–74)

HOUSE OF IDEAS, INC., PLAINTIFF *v.* UNITED STATES, DEFENDANT
Court No. 78–7–01323

Before WATSON, *Judge.*

DECISION

CLASSIFICATION—BANKS IN HUMAN SHAPE

The bank component of papier-mache banks shaped like clowns, was found to be of equivalent or greater importance to its commercial function than its human shape. Therefore, the bank was not adequately described as a doll under Item 737.20, TSUS, and was more

properly classifiable as articles of papier-mache not specially provided for under Item 256.75, TSUS.

GENERALIZED SYSTEM OF PREFERENCES—ENTITLEMENT TO GSP TREATMENT

The merchandise was classified under Item 256.75, TSUS, and exported from a beneficiary country for GSP purposes. Thus, completion of the certificate of origin in compliance with regulations promulgated under General Headnote 3(a)(ii), of the TSUS entitled the merchandise to duty-free treatment.

[Judgment for plaintiff.]

(Decided August 11, 1981)

Glad & White, (*Edward N. Glad* at the trial; *Steven B. Lehat* on the brief), for the plaintiff.

Stuart E. Schiffer, Acting Assistant Attorney General; *Joseph I. Liebman*, Attorney in Charge, International Trade Field Office, Commercial Litigation Branch (*Saul Davis*, at the trial and on the brief) for the defendant.

WATSON, *Judge:* Plaintiff challenges the denial of its protest against the government's classification of his merchandise as dolls, under Item 737.20, TSUS,[1] as modified by T.D. 68/9, dutiable at 17.5 percent ad valorem. Plaintiff contends that the proper classification of the merchandise is "articles of papier-mache not specially provided for," under Item 256.75,[2] TSUS, which is duty free under the General System of Preferences, for products of Taiwan.

The items in question were exported from Taiwan on March 25, 1977 and entered at the Port of Los Angeles. They are described on the Special Customs Invoice and the GSP Certificate of Origin as "Toys #452 Clown Bank." Plaintiff's Exhibit 1, which is a representative sample of the items, is a brightly colored, hollow, papier-mache figure in the form of a clown with a top-hat. The figure is 7 and ¾ inches tall and (approximately) 11 inches in circumference at the waist. In the back of the figure's head there is a slot for coins, and in what would be the bottom (The bottom of the sample was destroyed to determine its component materials.) there is a hole with a rubber plug.

I

Plaintiff argues that this object is a bank and the clown-like attributes of the sample are ornamental, and without independent

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[1] Item 737.20. Dolls, and parts of dolls including doll clothing
17.5% ad val., 70% ad val.
Dolls (dressed or undressed).

[2] Item 256.70. Articles, of pulp, of papier-mache, of paper, of paperboard, or of any combination thereof, not specially provided for:
Of pulp, not including articles of paper or of paperboard 5% ad val., 30% ad val.
Of papier-mache, 4% ad val., 25% ad val.

commercial significance. Alternatively, plaintiff argues that if there is a doll component to the object, the integration of the functions and features of the doll and the bank makes the object "more than" a doll.

The government's defense is that the plaintiff has failed to adduce any proof which shows the sample to be more than a doll. Additionally, it argues that the doll provision is an "eo nomine" provision and, based on lexicographical authorities and plaintiff's own advertising materials, it is sufficiently broad a term to encompass this article.

For reasons set forth below it is the opinion of the Court that the items in question are not fully described as dolls.

In *Janex Corp.* v. *United States*, 80 Cust. Ct. 146, C.D. 4748 (1978), the Court was confronted with plastic figurines resembling the fictional characters Raggedy Ann and Raggedy Andy, which were designed to light up when lifted up off a surface and switch off when placed down. The Court, in granting summary judgment to the plaintiff, held that the nightlight feature was "not incidental, subsidiary, or auxiliary to the use of the articles as 'dolls' as that term is commonly used." Id. at 152. The rationale was that the plastic figurine combined the separate functions of two distinct articles, i.e., a doll and a nightlight, resulting in a hybrid product with un que commercial and design properties and a purpose distinct from that of a doll. Therefore, Item 737.20, TSUS, providing only for the doll aspect of the plastic figure, inadequately described the article, and classification as such was incorrect.

Defendant argues that the items in question do not meet the "two equally essential functions" test of *Janex*. The design and construction of plaintiff's exhibit #1 belie that contention. It is patently clear that the object has two design characteristics. One, the doll component, has the superficial appearance of a human figure. The other, the bank component, has the function of a receptacle and storage space for coins or folded bills. Inasmuch as the commercial viability of the item depends on its functioning as a bank, this aspect of the article is not insignificant or incidental to the use of the article as a replica of a human figure. The Court is of the opinion, that the item satisfied the rationale of *Janex*, supra.

Defendant's reliance on *Fortune Star Products Corp.* v. *United States*, 78 Cust. Ct. 184, C.R.D. 77–3 (1977), to uphold the classification of the items as dolls is misplaced. There, Judge Maletz denied plaintiff's motion for summary judgment in which plaintiff argued that a doll figure containing a radio, was "more than" a doll based on the "predominant cost" of the radio. The motion was denied because plaintiff's affidavit regarding the costs, lacked "documentation, detail and explanation" and was inadmissable on evidentiary grounds.

In any event, the "predominant cost" analysis is not apropos to the specific facts of this case. The item in question does not have two or more physically severable, separately identifiable parts, the costs of which can be examined in isolation, and weighed against each other, as was the case in *Fortune*, supra. Rather the existence of the doll and bank components of the article springs from a unitary and indivisible source—the shaped papier-mache.

Likewise, *Amico, Inc.* v. *United States*, 66 CCPA 5, C.A.D. 1214, 586 F. 2d 217 (1978) and *United States* v. *Cody Manufacturing Co., Inc.*, et al., do not support the classification of this merchandise as a "doll." In *Amico*, the Court of Customs and Patent Appeals ruled that a music box with two dancing figures, was incorrectly held to be "more than" a music box. The Court concluded that the fact that the two dancers "constituted a major selling feature" was insufficient to justify the invocation of the "more than" doctrine. It reasoned that the function of the two figures was "solely that of design and appearance," and that they had no value, or commercial function apart from their connection with the music box. Here the human shape has no function other than to make attractive the receptacle and storage space which is the bank component of the article, so as to make it desirable to the intended class of users. If anything, the *Amico* rule that commercial function rather than design and appearance is the determinant of classification suggests that the doll portion of this article should not be the basis for classification.

In *Cody*, the Court held that a plastic figurine with a spike extending from its torso, was not "more than" a doll. The spike served no purpose other than to connect the figurine to a music box so it could appear to dance while the music box was in operation. The Court's analysis hinged on the fact that the metal spike in no way altered the appearance or use of the figurine as a replica of a ballerina. That is to be distinguished from the case at hand, where the item is a replica of a human being, yet has an important unrelated function as a bank.

The government's alternative argument is that the dolls provision of the TSUS is an "eo nomine" provision, and as such the Court is prevented from looking to the use of the article in question and must instead look to lexicographical authorities and plaintiff's own descriptions of similar articles, to determine whether it is a doll.

The simple answer to this argument is that there is no all encompassing definition of what is a doll. *Russ Berrie & Co., Inc.* v. *United States*, 76 Cust. Ct. 218, 224–5, C.D. 4659, 417 F. Supp. 1035 (1976). While the Court is to be *guided* by lexicographical authorities, there need not be a slavish or automatic deference to what lexicographical authorities define as dolls. This is especially so when the lexicographical authorities describe as dolls items (Def. Br. at 28) which by

law may not be dolls. The Mr. Peanut salt and pepper shakers described as "doll" in defendant's exhibit #B–1, and "kewpies" designed to hold talcum powder in defendant's exhibit #B–2 are cases in point. It is true that plaintiff in its merchandising materials has described banks in human form, painted to resemble the native costumes of different countries as the "Bank Dolls of all Nations." (Defendant's Exhibit #B–5.) This fact is not dispositive of the issue of whether the item before the Court is a doll. The manner in which an article is merchandised is but one of several factors to be considered in determining the proper classification of an article. *S.Y. Rhee Importers* v. *United States*, 61 CCPA 2, 4 C.A.D. 1108, 486 F. 2d 1385 (1973); *Ignaz Strauss & Co., Inc.* v. *United States*, 37 CCPA 32, 35 C.A.D. 415 (1949); *Russ Berrie & Co., Inc.* v. *United States*, 76 Cust. Ct. 218, 226 C.D. 4659, 417 F. Supp. 1035 (1976); *Novelty Import Co., Inc.* v. *United States*, 53 Cust. Ct. 274, 276, Abs. 68780 (1964).

Moreover, it should be made clear, that the Court may consider the use of a product to determine its identity, even if it is alleged that the product falls within an "eo nomine" tariff provision. *United States* v. *Quon Quon Company*, 46 CCPA 71, 74 (1959).

To sum up, the Court is of the opinion that the merchandise is not adequately described by Item 737.20 of the TSUS as modified by T.D. 68/9 for dolls, but rather is more properly classified as "articles of papier-mache not specially provided for" under Item 256.75 of the TSUS.

II

In response to the plaintiff's request for GSP treatment the government argues that form "A" entitled "Generalized System of Preferences, Certificate of Origin" filed with the entry is sufficient only to serve as proof of "compliance with regulations." That is to say, the government claims form "A" is insufficient to show compliance with the statutory requirements of General Headnote 3(a)(ii) of the TSUS. The government further argues that completion of the form by the exporter rather than the manufacturer, vitiates the use of form "A" as evidence of the origin of the merchandise in question.

Both of these contentions are without merit. Section 3(a)(ii) of the General Headnotes and Rules of Interpretation for the TSUS (1976), plainly confers power on the Secretary of the Treasury to promulgate regulations for the implementation of the Tariff Schedules.[3]

* * * * * * *

[3] Whenever an eligible article is imported into the customs territory of the United States directly from a country or territory listed in subdivision (c)(i) of this headnote, it shall receive duty-free treatment, unless excluded from such treatment by subdivision (c)(iii) of this headnote, provided that, in accordance with regulations promulgated by the Secretary of the Treasury:

(A) the sum of (1) the cost or value of the materials produced in the beneficiary developing country plus (2) the direct costs of processing operations performed in such country is not less than 35 percent of the appraised value of such article at the time of its entry into the customs territory of the United States; or

This being a lawful delegation of power, compliance with the regulations issued by the Secretary of the Treasury is a precondition to receiving GSP treatment. *Socony Vacuum Oil Co., Inc.* v. *United States*, 44 CCPA 83, 90, C.A.D. 641 (1957); *J. E. Bernard & Co.* v. *United States*, 62 Cust. Ct. 304, 310, C.D. 2750, 304 F. Supp. 1034 (1969).

19 CFR 10.173 (1980) entitled "Evidence of the Country of Origin," regarding the Generalized System of Preferences Certificate of Origin form "A," states in plain English that the form shall be filed with the district director, "as evidence of the country of origin." [4] Inasmuch as the language of 19 CFR 10.176 (1980) [5] duplicates the language of General Headnote 3(a)(ii), requiring that not less than 35 percent of the value of the article inclusive of materials and production costs be attributable to the beneficiary country, it is reasonable to conclude that compliance with the regulations is compliance with the General Headnote.

Plaintiff offered uncontroverted proof that form "A" was completed in the manner required by regulation, and that its contents were not challenged by Customs officials. In addition, it was proved that the form contained the designation "P" in column 8 indicating the materials and manufacture of the merchandise in question were completely indigenous to Taiwan. Thus the burden of proof as to why the merchandise should not receive GSP treatment was placed squarely on the government.

The government has not satisfied this burden of proof with the argument that form "A" is not to be given credence because it was completed by the exporter rather than the manufacturer. The government claims the exporter has no actual knowledge of the origin of the materials, or of the production costs involved in manufacturing the goods in question. This argument may have merit, but it contravenes the plain language of 19 CFR 10.173(a)(1) (1980), requiring the *exporter* to sign form "A." In addition, this argument ignores two facts. The first being that form "A" is *certified by an independent governmental authority of the exporting country*, designated for that purpose by the Customs Service. R. Sturm, Customs Law and Administration, § 63.6 (1980). The second being that customs officials can

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[4] § 10.173 Evidence of the country of origin:

(a) *Shipments valued in excess of $250*—(1) *Certificate of Origin.* Except as provided in paragraph (a)(5) of this section, the importer or consignee of a shipment of eligible merchandise valued in excess of $250 shall file with the entry the Generalized System of Preferences Certificate of Origin Form A, *as evidence of the country of origin.* Form A *shall be signed by the exporter of the merchandise* in the country from which it is directly imported, certified by the designated governmental authority in that country, and properly completed. [emphasis supplied]

[5] § 10.176 Country of origin criteria.

(a) *Merchandise produced in one beneficiary developing country.* Merchandise which is the growth, product, manufacture, or assembly of a beneficiary developing country and which is imported directly from such beneficiary developing country may qualify for duty-free entry under the Generalized System of Preferences only if the sum of the cost or value of the materials produced in the beneficiary developing country, plus the direct costs of processing operations performed in such country, is not less than 35 percent of the value of the article as appraised in accordance with section 402 or 402a, Tariff Act of 1930, as amended (19 U.S.C. 1401a, 1402).

request further evidence of the country of origin as such evidence is "subject to such verification as the district director deems necessary." 19 CFR 10.173(a)(4) (1980).[6] There is no indication in the record that such information was requested.

In light of the above, this Court is of the opinion that the information in Form "A" completed by Dependable Products (the exporter) in conformance with the requirements of 19 CFR 10.173 (1980) is evidence of the country of origin of the merchandise in question.

As the merchandise in question is the product of Taiwan,[7] and is properly classifiable under Item 256.75 of the TSUS, it is entitled to GSP treatment.

The Court having determined that the merchandise is entitled to GSP treatment, which under the TSUS means it is duty-free, need not reach the issue of valuation.

For the reasons expressed above, it is held that the merchandise in question is properly classifiable as articles of papier-mache not specially provided for under Item 256.75 of the TSUS. Accordingly, the merchandise is duty-free, as Item 256.75 is entitled to GSP treatment and Taiwan was a beneficiary country for purposes of the GSP in 1976.

Judgment will enter accordingly.

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[6] (4) *Verification of evidence.* Evidence of the country of origin required under this paragraph shall be subject to such verification as the district director deems necessary.

[7] Taiwan is listed as the "Republic of China" on the list of countries designated as "Beneficiary Developing Countries for Purposes of the Generalized System of Preferences" General Headnote 3(c)(1), TSUS, 1976.

Decisions of the United States Court of International Trade

Abstracts

Abstracted Protest Decisions

DEPARTMENT OF THE TREASURY, *August 17, 1981.*

The following abstracts of decisions of the United States Court of International Trade at New York are published for the information and guidance of officers of the customs and others concerned. Although the decisions are not of sufficient general interest to print in full, the summary herein given will be of assistance to customs officials in easily locating cases and tracing important facts.

WILLIAM T. ARCHEY,
Acting Commissioner of Customs.

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P81/140	Richardson, J. August 10, 1981	Dessau Brass, Inc.	79-10-01500	Item 654.00 or 653.35 5% Item 653.37 9.5% Item 657.35 7.5% + 0.6¢ per lb.	Items A654.00, A653.35, A653.37 and A657.35 Free of duty pursuant to G.S.P.	Agreed statement of facts	New York Articles of brass; products of eligible beneficiary country

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P81/141	Watson, J. August 10, 1981	WFS Div. Amer. Rec. Grp., Ltd.	79-1-00036-S	Item 389670 25¢ per lb. + 15%	Item 735.20 10%	Newman Importing Co., Inc. v. U.S. (C.D. 4648)	Chicago Nylon backpacking tents
P81/142	Newman, J. August 12, 1981	M. Rubin & Sons Inc.	79-6-00983	Item 380.00 35%	Item 380.39 16.5%	Agreed statement of facts	New York Men's or boys' wearing apparel of cotton, not ornamented, not knit
P81/143	Re, C.J. August 14, 1981	Sanyo Electric Inc.	76-9-02116, etc.	Item 683.70 35%	Item 688.40 5.5%	Sanyo Electric Inc. v. U.S. (C.D. 4855, aff'd C.A.D. 1258)	New York Power failure lights
P81/144	Re, C.J. August 14, 1981	Sanyo Electric Inc.	76-9-02184, etc.	Item 683.70 35%	Item 688.40 5.5%	Sanyo Electric Inc. v. U.S. (C.D. 4855, aff'd C.A.D. 1258)	Los Angeles Power failure lights
P81/145	Newman, J. August 14, 1981	Carlyle Footwear	80-11-00047	Item 700.60 20%	Item 700.35 8.5%	Agreed statement of facts	Los Angeles Men's, youths' or boys' footwear of leather, not having uppers of fibers

Decisions of the United States Court of International Trade

Abstracts

Abstracted Reappraisement Decisions

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R81/286	Re, C.J. August 10, 1981	Nichimen Co., Inc.	75-8-01953	Export value	Appraised values shown on entry papers, less additions included to reflect currency revaluation	C.B.S. Imports Corp. v. U.S. (C.D. 4739)	Los Angeles Miscellaneous articles
R81/287	Richardson, J. August 10, 1981	Mitsubishi International Corporation	73-6-01422, etc.	American selling price	Appraised values less 23%, per pair	Agreed statement of facts	Seattle Footwear
R81/288	Richardson, J. August 10, 1981	Puerto Rico Olefins Company	78-6-01052, etc.	Export value	Invoiced unit values appearing in entry papers	Agreed statement of facts	San Juan Miscellaneous articles
R81/289	Re, C.J. August 11, 1981	Nichimen Co., Inc.	75-4-00832, etc.	Export value	Appraised values shown on entry papers less additions included to reflect currency revaluation	C.B.S. Imports Corp. v. U.S. (C.D. 4739)	Los Angeles-Long Beach (Los Angeles) Miscellaneous articles

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R81/290	Richardson, J. August 11, 1981	Topp Electronics, Inc.	79-2-00329	Constructed value	Specified on entry papers by liquidating officer excluding one-half of amount added for assists	Agreed statement of facts	Los Angeles Miscellaneous articles
R81/291	Richardson, J. August 11, 1981	Topp Electronics, Inc.	79-3-00436	Constructed value	Specified on entry papers by liquidating officer excluding one-half of amount added for assists	Agreed statement of facts	Los Angeles Miscellaneous articles
R81/292	Re, C.J. August 12, 1981	Marubeni America Corp.	75-5-01261	Export value	Unit values found by appraising customs official, less ocean freight and marine insurance, and without additions for currency fluctuation	C.B.S. Imports Corp. v. U.S. (C.D. 4739)	Chicago; New York Miscellaneous articles
R81/293	Re, C.J. August 12, 1981	Mitsubishi International Corp.	73-7-02127	Export value	Appraised values shown on entry papers, less additions included to reflect currency revaluation	C.B.S. Imports Corp. v. U.S. (C.D. 4739)	Chicago; New York; Los Angeles Miscellaneous articles
R81/294	Re, C.J. August 12, 1981	Mitsubishi International Corp.	75-5-01262	Export value	Appraised values shown on entry papers, less additions included to reflect currency revaluation	C.B.S. Imports Corp. v. U.S. (C.D. 4739)	Chicago; New York Miscellaneous articles

R81/295	Re, C.J. August 12, 1981	Mitsubishi International Corp.	75-11-02798	Export value	Appraised values shown on entry papers, less additions included to reflect currency revaluation	C.B.S. Imports Corp. v. U.S. (C.D. 4739)	New York Miscellaneous articles
R81/296	Re, C.J. August 12, 1981	Mitsubishi International Corp.	76-3-00617	Export value	Appraised values shown on entry papers, less additions included to reflect currency revaluation	C.B.S. Imports Corp. v. U.S. (C.D. 4739)	New York Miscellaneous articles
R81/297	Richardson, J. August 12, 1981	Mitsubishi International Corporation	72-12-02548, etc.	American selling price	Appraised values less 23%, per pair	Agreed statement of facts	Los Angeles Footwear
R81/298	Watson, J. August 12, 1981	Ciba Chemical & Dye Co., Div. Ciba Corp.	R70/7781	United States value	U.S. selling prices, less 1% cash discount as determined by customs officer at time of appraisement; less 29.2% representing profit and general expenses usually made in U.S. on sales of dyestuffs of same class or kind; less costs of transportation and insurance from place of shipment to place of delivery in amounts determined by customs officer at time of appraisement; divided by 1.40 or such other factor applied by customs officer, to allow for customs duties payable on imported dyestuffs	U.S. v. Geigy Chemical Corporation et al. (C.A.D. 1155)	New York Benzenoid dyestuffs

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R81/299	Watson, J. August 12, 1981	Ciba Co. Inc.	R66/21635	United States value	U.S. selling prices, less 1% cash discount as determined by customs officer at time of appraisement; less 25.3% representing profit and general expenses usually made in U.S. on sales of dyestuffs of same class or kind; less costs of transportation and insurance from place of shipment to place of delivery in amounts determined by customs officer at time of appraisement; divided by 1.40 or such other factor applied by customs officer, to allow for customs duties payable on imported dyestuffs	U.S. v. Geigy Chemical Corporation et al. (C.A.D. 1155)	New York Benzenoid dyestuffs

R81/300	Watson, J. August 12, 1981	Geigy Chemical Corp.	R65/18592	United States value	U.S. selling prices, less 1% cash discount as determined by customs officer at time of appraisement; less 24.2% representing profit and general expenses usually made in U.S. on sales of dyestuffs of same class or kind; less costs of transportation and insurance from place of shipment to place of delivery in amounts determined by customs officer at time of appraisement; divided by 1.40 or such other factor applied by customs officer, to allow for customs duties payable on imported dyestuffs	U.S. v. Geigy Chemical Corporation et al. (C.A.D. 1155)	New York Benzenoid dyestuffs

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R81/301	Watson, J. August 12, 1981	Geigy Chemical Corp.	R65/20962, etc.	United States value	U.S. selling prices, less 1% cash discount as determined by customs officer at time of appraisement; less 25.3% representing profit and general expenses usually made in U.S. on sales of dyestuffs of same class or kind; less costs of transportation and insurance from place of shipment to place of delivery in amounts determined by customs officer at time of appraisement; divided by 1.40 or such other factor applied by customs officer, to allow for customs duties payable on imported dyestuffs	U.S. v. Geigy Chemical Corporation et al. (C.A.D. 1155)	New York Benzenoid dyestuffs

R81/302	Watson, J. August 12, 1981	Geigy Chemical Corp.	R65/24007	United States value	U.S. selling prices, less 1% cash discount as determined by customs officer at time of appraisement; less 33.4% representing profit and general expenses usually made in U.S. on sales of dyestuffs of same class or kind; less costs of transportation and insurance from place of shipment to place of delivery in amounts determined by customs officer at time of appraisement; divided by 1.40 or such other factor applied by customs officer, to allow for customs duties payable on imported dyestuffs	U.S. v. Geigy Chemical Corporation et al. (C.A.D. 1155)	New York Benzenoid dyestuffs

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R81/303	Watson, J. August 12, 1981	Geigy Chemical Corporation	R66/12629, etc.	United States value	U.S. selling prices, less 1% cash discount as determined by customs officer at time of appraisement; less 33.4% representing profit and general expenses usually made in U.S. on sales of dyestuffs of same class or kind; less costs of transportation and insurance from place of shipment to place of delivery in amounts determined by customs officer at time of appraisement; divided by 1.40 or such other factor applied by customs officer, to allow for customs duties payable on imported dyestuffs	U.S. v. Geigy Chemical Corporation et al. (C.A.D. 1155)	New York Benzenoid dyestuffs

R81/304	Watson, J. August 12, 1981	Geigy Chemical Corporation	R67/8258	United States value	U.S. selling prices, less 1% cash discount as determined by customs officer at time of appraisement; less 28.3% representing profit and general expenses usually made in U.S. on sales of dyestuffs of same class or kind; less costs of transportation and insurance from place of shipment to place of delivery in amounts determined by customs officer at time of appraisement; divided by 1.40 or such other factor applied by customs officer, to allow for customs duties payable on imported dyestuffs	U.S. v. Geigy Chemical Corporation et al. (C.A.D. 1155)	New York Benzenoid dyestuffs

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R81/305	Watson, J. August 12, 1981	Geigy Chemical Corp.	R69/6519, etc.	United States value	U.S. selling prices, less 1% cash discount as determined by customs officer at time of appraisement; less 28.9% representing profit and general expenses usually made in U.S. on sales of dyestuffs of same class or kind; less costs of transportation and insurance from place of shipment to place of delivery in amounts determined by customs officer at time of appraisement; divided by 1.40 or such other factor applied by customs officer, to allow for customs duties payable on imported dyestuffs	U.S. v. Geigy Chemical Corporation et al. (C.A.D. 1155)	New York Benzenoid dyestuffs

R81/306	Watson, J. August 12, 1981	Geigy Chemical Corporation	R70/1625	United States value	U.S. selling prices, less 1% cash discount as determined by customs officer at time of appraisement; less 28.9% representing profit and general expenses usually made in U.S. on sales of dyestuffs of same class or kind; less costs of transportation and insurance from place of shipment to place of delivery in amounts determined by customs officer at time of appraisement; divided by 1.40 or such other factor applied by customs officer, to allow for customs duties payable on imported dyestuffs	U.S. v. Geigy Chemical Corporation et al. (C.A.D. 1155)	New York Benzenoid dyestuffs

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DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R81/307	Watson, J. August 12, 1981	Geigy Chemical Corp.	R70/3911, etc.	United States value	U.S. selling prices, less 1% cash discount as determined by customs officer at time of appraisement; less 31.1% representing profit and general expenses usually made in U.S. on sales of dyestuffs of same class or kind; less costs of transportation and insurance from place of shipment to place of delivery in amounts determined by customs officer at time of appraisement; divided by 1.40 or such other factor applied by customs officer, to allow for customs duties payable on imported dyestuffs	U.S. v. Geigy Chemical Corporation et al. (C.A.D. 1155)	New York Benzenoid dyestuffs
R81/308	Watson, J. August 12, 1981	Rohner Gehrig & Co., Inc.	R66/25733, etc.	United States value	U.S. selling prices, less 1% cash discount as determined by customs officer at time of appraisement; less 25.7% representing profit and general expenses usually made	U.S. v. Geigy Chemical Corporation et al. (C.A.D. 1155)	New York Benzenoid dyestuffs

					in U.S. on sales of dyestuffs of same class or kind; less costs of transportation and insurance from place of shipment to place of delivery in amounts determined by customs officer at time of appraisement; divided by 1.40 or such other factor applied by customs officer, to allow for customs duties payable on imported dyestuffs		
R81/309	Newman, J. August 12, 1981	Bus and Truck Supply Co.	73-1-00076, etc.	Export value	Appraised values, less 10% (excluding from 10% deduction the value of any Michelin tires included in appraised values), less value of components of U.S. origin allowed on liquidation	Agreed statement of facts	Houston Inter-city passenger buses
R81/310	Newman, J. August 13, 1981	Elliot Knitwear Corp. Arthur J. Fritz & Co. of L.A.	R62/2654, etc.	Export value	F.o.b. unit invoice prices plus 20% of difference between f.o.b. unit invoice prices and appraised values	Agreed statement of facts	Los Angeles Sweaters and gloves
R81/311	Newman, J. August 13, 1981	Import Associates Inc.	80-12-00193	American selling price	$5 65 per pair, less 2% $5.35 (men's joggers) per pair, less 2% (boys' joggers)	Agreed statement of facts	Seattle Men's ("big boys") and boys' joggers

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R81/312	Newman, J. August 13, 1981	Robert M. McCoy, a/c Bus and Truck Supply Co.	75-10-02572	Export value	Appraised values, less 10% (excluding from 10% deduction the value of any Michelin tires included in appraised values), less value of components of U.S. origin allowed on liquidation	Agreed statement of facts	Jacksonville Inter-city passenger buses
R81/313	Newman, J. August 13, 1981	Mitsubishi International Corporation	73-10-02875, etc.	American selling price	Appraised values less 23%, per pair	Agreed statement of facts	Boston Footwear
R81/314	Newman, J. August 13, 1981	Henry A. Wess, Inc.	284940-A, etc.	Export value	Appraised unit values, less 7.5%, net packed	Agreed statement of facts	Cincinnati Binoculars

R81/315	Newman, J. August 13, 1981	Henry A. Wess, Inc.	290741-A, etc.	Export value	Appraised unit values less 7.5%, net packed	Agreed statement of facts	Cincinnati Binoculars
R81/316	Newman, J. August 13, 1981	Henry A. Wess, Inc.	R58/23061, etc.	Export value	Appraised unit values less 7.5%, net packed	Agreed statement of facts	Cincinnati Prison binoculars
R81/317	Richardson, J. August 14, 1981	Mitsubishi International Corporation	72-12-02549, etc.	American selling price	Appraised values less 23%, per pair	Agreed statement of facts	Mobile Footwear
R81/318	Richardson, J. August 14, 1981	Mitsubishi International Corporation	73-4-01119, etc.	American selling price	Appraised values less 23%, per pair	Agreed statement of facts	Charleston Footwear
R81/319	Richardson, J. August 14, 1981	Mitsubishi International Corporation	73-5-01303, etc.	American selling price	Appraised values less 23%, per pair	Agreed statement of facts	San Francisco Footwear

International Trade Commission Notices

Investigations by the U.S. International Trade Commission

DEPARTMENT OF THE TREASURY, August 27, 1981.

The appended notices relating to investigations by the U.S. International Trade Commission are published for the information of Customs officers and others concerned.

WILLIAM T. ARCHEY,
Acting Commissioner of Customs.

In the Matter of
CERTAIN SURVEYING DEVICES } Investigation No. 337–TA–68

Notice of Issuance of Advisory Opinion

AGENCY: U.S. International Trade Commission.

ACTION: Issuance of an advisory opinion regarding scope of exclusion order.

SUMMARY: At the conclusion of the original investigation, the Commission determined that certain imported surveying devices infringed a United States patent in violation of 19 U.S.C. § 1337 and issued an order excluding infringing surveying devices. John Woods Survey Equipment, Ltd., the respondent in the original investigation, subsequently requested that the Commission issue an advisory opinion to the effect that Woods' recently modified device does not infringe the patent in question and is therefore not subject to the Commission's exclusion order. After receiving submissions from Woods and from Gammon Reel, the complainant in the original investigation, the Commission determined that an advisory opinion is appropriate, but the Woods' modified surveying device continues to infringe the patent in question and therefore remains subject to the Commission's exclusion order.

Copies of all non-confidential documents filed in connection with

this request for an advisory opinion are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202–523–0161.

FOR FURTHER INFORMATION CONTACT: Scott Daniels, Esq., Office of the General Counsel, telephone 202–523–0480.

By order of the Commission.

Issued: August 18, 1981.

KENNETH R. MASON,
Secretary.

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19 CFR Part 200

Amendment to Agency Ethics Rules

AGENCY: U.S. International Trade Commission.

ACTION: Final rule.

SUMMARY: The final rule published at 46 FR 41036 (August 14, 1981) contained no effective date. The effective date is the date of publication, August 14, 1981.

FOR FURTHER INFORMATION CONTACT: Michael H. Stein, Esq., General Counsel, USITC Ethics Counselor, 701 E Street NW., Washington, D.C. 20436, 202–523–0350.

By order of the Commission.

Issued: August 18, 1981.

KENNETH R. MASON,
Secretary.

(TA–503(a)–9 and 332–130)

PRESIDENT'S LIST OF ARTICLES WHICH MAY BE DESIGNATED AS ELIGIBLE ARTICLES FOR PURPOSES OF THE GENERALIZED SYSTEM OF PREFERENCES

AGENCY: United States International Trade Commission.

ACTION: In accordance with the provisions of sections 503(a) and 131(b) of the Trade Act of 1974 (19 U.S.C. 2463(a) and 2151(b)) (hereinafter referred to as "the Act") and section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)), the Commission has instituted investigation Nos. TA–503(a)–9 and 332–130 for the purpose of

obtaining, to the extent practicable, information of the kind described in section 131(d) of the Act. This information is for use in connection with the preparation of advice requested by the U.S. Trade Representative (USTR) with respect to certain listed articles as to the probable economic effect on U.S. industries producing like or directly competitive articles and on consumers of the elimination of U.S. import duties under the United States Generalized System of Preferences (GSP), set forth in Title V of the Act.

EFFECTIVE DATE: August 14, 1981.

FOR FURTHER INFORMATION CONTACT:

(1) Agricultural products, Mr. Edward Furlow (202–724–0068).
(2) Textile products, Mr. Reuben Schwartz (202–523–0114).
(3) Chemical products, Dr. Aimison Jonnard (202–523–0423).
(4) Minerals and metals, Mr. Larry Brookhart (202–523–0275).
(5) Machinery and equipment, Mr. Aaron Chesser (202–523–0353).
(6) Miscellaneous manufactures, Mr. Walter Trezevant (202–724–1719).

All of the above are in the Commission's Office of Industries. For information on legal aspects of the investigation contact Mr. William Gearhart of the Commission's Office of the General Counsel at 202–523–0487.

SUPPLEMENTARY INFORMATION: On July 30, 1981, in accordance with sections 503(a) and 131(a) of the Act and pursuant to the authority of the President delegated to the USTR by Executive Order 11846, as amended by Executive Order 11947, the USTR furnished the United States International Trade Commission a list of items which may be designated as eligible articles for purposes of the GSP (see Annex I).

In providing its advice, the USTR requested the Commission to assume that benefits of the GSP would not apply to imports that would be excluded from receiving such benefits by virtue of the "competitive need" limitations specified in section 504(c) of the Act.

Section 504(d) of the Act exempts from one of the competitive-need limits in section 504(c) articles for which no like or directly competitive article was being produced in the United States on the date of enactment of the Act. Accordingly, pursuant to the authority of section 332(g) of the Tariff Act of 1930, and in conformity with the delegation of authority from the President to him of Executive Order 11846 as amended by Executive Order 11947, the USTR requested that the Commission also provide advice with respect to whether products like or directly competitive with any articles

contained in the TSUS(A) items in Annex I and also TSUS item 791.28 were being produced in the United States on January 3, 1975. A list giving detailed descriptions of the articles contained in the TSUS(A) items identified in Annex I is available upon request from the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436 (202–523–5178).

The USTR announced the items which have been sent to the Commission for probable effects advice in the July 17, 1981 Federal Register (46 FR 37115).

Public Hearing

A public hearing in connection with the investigation will be held in the Commission Hearing Room, 701 E Street NW., Washington, D.C. 20436, beginning at 10:00 a.m., e.s.t., on November 3, 1981, to be continued on November 4, 1981, if required. All persons shall have the right to appear by counsel or in person, to present information, and to be heard. Requests to appear at the public hearing should be filed with the Secretary, United States International Trade Commission, 701 E Street NW., Washington, D.C. 20436, not later than noon, October 28, 1981.

Written Submissions

In lieu of or in addition to appearances at the public hearing, interested persons are invited to submit written statements concerning the investigation. Commercial or financial information which a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons. To be ensured of consideration by the Commission, written statements should be submitted at the earliest practicable date, but no later than November 11, 1981. All submissions should be addressed to the Secretary at the Commission's office in Washington, D.C.

By order of the Commission.

Issued: August 17, 1981.

KENNETH R. MASON,
Secretary.

Attachment.

ANNEX I.—*Articles being considered for designation as eligible for purposes of the GSP*

TSUS or TSUSA item	TSUS or TSUSA item	TSUS or TSUSA item	TSUS or TSUSA item
114. 20	146. 76	360. 4645	452. 34
121. 40	148. 00	363. 90	452. 44
121. 61	148. 17	364. 07(pt.) [4]	455. 04
121. 63	148. 60	387. 35(pt.) [5]	522. 61
135. 12	148. 93	402. 56	606. 22
135. 14	148. 98	402. 80	606. 42
135. 16	148. 9820	402. 80(pt.)	642. 1110
135. 92(pt.) [1]	150. 02	403. 45	652. 94
136. 20	152. 30	403. 45(pt.)	652. 95
136. 22	152. 7640	403. 56(pt.) [6]	652. 96
136. 60	153. 0420	405. 08(pt.) [7]	685. 27
136. 61	154. 90	405. 60(pt.) [8]	685. 36
137. 10	161. 57	406. 28	706. 13
137. 50	161. 84	406. 36	706. 17(pt.)
137. 63	161. 88	406. 64	706. 2045
137. 89	168. 78	406. 84	706. 6235
138. 4250(pt.) [2]	169. 04	411. 64	737. 2205
140. 40	183. 01	412. 34	737. 2240
140. 65	190. 85	412. 34(pt.) [9]	760. 0520
140. 75(pt.) [3]	222. 50	432. 25	772. 48
141. 82	355. 65	436. 00	772. 57
141. 87	355. 6510	437. 47	
144. 12	360. 4640	452. 28	

[1] Only cucumbers entered during the period from March 1 to April 30, inclusive, in any year.
[2] Only mixtures of pea pods and sliced water chestnuts.
[3] Only other vegetables, reduced to flour, except tomato flour.
[4] Only certified and hand-loomed jacquard-figured cotton tapestries.
[5] Only sisal baskets.
[6] Only tetrabromobisphenol A.
[7] Only D(-)-para-hydroxyphenylglycine.
[8] Only benzene acetonitrile.
[9] Only flat goods of rattan or of palm leaf.

Investigation No. 731–TA–49 (Preliminary)

FIREPLACE MESH PANELS FROM TAIWAN

AGENCY: United States International Trade Commission.

ACTION: Institution of Preliminary Antidumping Investigation.

SUMMARY: The U.S. International Trade Commission hereby gives notice of the institution of investigation No. 731–TA–49 (Preliminary) to determine whether there is a reasonable indication that an industry

in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded by reason of imports from Taiwan of fireplace mesh panels which are allegedly sold, or likely to be sold, in the United States at less than fair value (LTFV). For the purposes of this investigation, fireplace mesh panels are defined as precut, flexible mesh panels, both finished and unfinished, which are constructed of interlocking spirals of steel wire and are of a kind used in the manufacture of safety screening by U.S. manufacturers of fireplace accessories and wood-burning stoves. Fireplace mesh panels are provided for either in item 642.87 or item 654.00 of the Tariff Schedules of the United States depending on their stage of processing.

EFFECTIVE DATE: August 13, 1981.

FOR FURTHER INFORMATION CONTACT: Ms. Vera A. Libeau, Office of Investigations, U.S. International Trade Commission, Room 339, 701 E Street NW., Washington, D.C. 20436; telephone 202–523–0368.

SUPPLEMENTARY INFORMATION: On August 10, 1981, petitions were simultaneously filed with the U.S. Department of Commerce and the U.S. International Trade Commission by International Management Service Associates, Inc. alleging that fireplace mesh panels from Taiwan are being sold in the United States at LTFV and that an industry in the United States is being materially injured, or threatened with material injury, by reason of such imports. Accordiugly, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. § 1673b(a)), the Commission is instituting preliminary antidumping investigation No. 731–TA–49 (Preliminary) to determine whether a reasonable indication of such injury exists. The Commission must make its determination within 45 days after the date on which the petition was received, or in this case by September 24, 1981. The investigation will be conducted according to the provisions of part 207, subpart B, of the Commission's Rules of Practice and Procedure (19 CFR § 207).

Written Submissions: Any person may submit to the Commission a written statement of information pertinent to the subject of the investigation. A signed original and nineteen (19) true copies of each submission must be filed at the Office of the Secretary, U.S. International Trade Commission Building, 701 E Street NW., Washington, D.C. 20436, on or before September 8, 1981. All written submissions except for confidential business data will be available for public inspection.

Any business information for which confidential treatment is desired shall be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information."

Confidential submissions and requests for confidential treatment must conform with the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR § 201.6).

For further information concerning the conduct of the investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, part 207, subparts A and B (19 CFR § 207), and part 201, subparts A through E (19 CFR § 201).

Conference: The Director of Operations of the Commission has scheduled a conference in connection with this investigation for 10 a.m., e.d.t., on Wednesday, September 4, 1981, at the U.S. International Trade Commission Building. Parties wishing to participate in the conference should contact the supervisory investigator for this investigation, Ms. Vera A. Libeau (202–523–0368). It is anticipated that parties in support of the petition for the imposition of antidumping duties and parties opposed to such petition will each be collectively allocated one (1) hour within which to make an oral presentation at the conference. Further details concerning the conduct of the conference will be provided by the supervisory investigator.

Inspection of the Petition: The petition filed in this case is available for public inspection at the office of the Secretary, U.S. International Trade Commission.

This notice is published pursuant to section 207.12 of the Commission's Rules of Practice and Procedure (19 CFR § 207.12).

By order of the Commission.

Issued: August 13, 1981.

KENNETH R. MASON,
Secretary.

TA–131(b)–7

PROBABLE ECONOMIC EFFECTS OF POSSIBLE TARIFF REDUCTIONS UNDER SECTION 123 OF THE TRADE ACT OF 1974

AGENCY: United States International Trade Commission.

ACTION: In accordance with the provisions of section 131(b) of the Trade Act of 1974 (hereinafter referred to as "the Act"), the Commission has instituted investigation No. TA–131(b)–7 for the purpose of obtaining, to the extent practicable, information of the kind described in section 131(b) of the Act. This information is for use in connection with the preparation of advice requested by the U.S. Trade Representative (USTR) with respect to certain articles as to the probable economic effect on U.S. industries producing like or directly competitive articles, and on consumers, of the temporary

reduction of U.S. duties by the maximum amount permissible under the authority of section 123 of the Act. The investigation covers the following list of items of the Tariff Schedules of the United States:

TSUS item	TSUS item	TSUS item	TSUS item
112. 03	252. 35	543. 11	685. 60
112. 40	256. 10	544. 51	708. 23
112. 62	308. 66	632. 34	710. 65
112. 94	316. 50	644. 11	722. 04
124. 30	374. 15	649. 67	722. 72
124. 40	385. 90	649. 83	723. 32
124. 80	420. 06	650. 21	725. 05
145. 52	425. 94	651. 23	725. 07
154. 50	426. 82	653. 37	730. 05
161. 07	437. 70	653. 45	745. 34
161. 71	450. 20	653. 80	750. 60
220. 36	455. 02	654. 20	750. 70
220. 47	460. 15	656. 25	773. 05
220. 48	473. 40	656. 30	
222. 20	511. 11	657. 70	
222. 25	512. 41	676. 20	

EFFECTIVE DATE: August 12, 1981.

FOR FURTHER INFORMATION CONTACT:

(1) Agricultural products, Mr. Edward Furlow (202–724–0068).
(2) Textile products, Mr. Reuben Schwartz, (202–523–0114).
(3) Chemical products, Dr. Aimison Jonnard (202–523–0423).
(4) Minerals and metals, Mr. Larry Brookhart (202–523–0275).
(5) Machinery and equipment, Mr. Aaron Chesser (202–523–0353).
(6) Miscellaneous manufactures, Mr. Walter Trezevant (202–724–1719).

All of the above are in the Commission's Office of Industries. For information on legal aspects of the investigation contact Mr. William Gearhart of the Commission's Office of the General Counsel at 202–523–0487.

SUPPLEMENTARY INFORMATION: On July 30, 1981, in accordance with section 131(a) of the Act and pursuant to the authority of the President delegated to the USTR by Executive Order 11846, as amended by Executive Order 11947, the USTR furnished the United States International Trade Commission with a list of articles which may be considered in international trade negotiations for the purpose of granting new temporary concessions as compensation for U.S. actions pursuant to Article XIX of the General Agreement on Tariffs and Trade (GATT). The USTR published

the list of articles in the August 5, 1981, Federal Register (46 FR 39926).

Public Hearing

A public hearing in connection with the investigation will be held in the Commission Hearing Room, 701 E Street NW., Washington, D.C. 20436, beginning at 10:00 a.m., e.d.t., on September 23, 1981, to be continued on September 24, 1981, if required. All persons shall have the right to appear by counsel or in person, to present information, and to be heard. Requests to appear at the public hearing should be filed with the Secretary, United States International Trade Commission, 701 E Street NW., Washington, D.C. 20436, not later than noon, September 17, 1981.

Written Submissions

In lieu of or in addition to appearances at the public hearing, interested persons are invited to submit written statements concerning the investigation. Commercial or financial information which a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons.

To be assured of consideration by the Commission, written statements should be submitted at the earliest practicable date, but no later than October 2, 1981. All submissions should be addressed to the Secretary at the Commission's office in Washington, D.C.

By order of the Commission.

Issued: August 17, 1981.

KENNETH R. MASON,
Secretary.

In the Matter of
CERTAIN AIRLESS PAINT SPRAY PUMPS AND COMPONENTS THEREOF } Investigation No. 337–TA–90

Commission Hearing on the Presiding Officer's Recommendation and on Relief, Bonding, and the Public Interest, and the Schedule for Filing Written Submissions

AGENCY: U.S. International Trade Commission.

ACTION: The scheduling of a public hearing and written submissions in investigation No. 337–TA–90, Certain Airless Paint Spray Pumps and Components Thereof.

Notice is hereby given that the presiding officer has issued a recommended determination that there is a violation of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, in the unauthorized importation into the United States and sale of certain airless paint spray pumps that are the subject of the Commission's investigation. Accordingly, the recommended determination and the record of the hearing have been certified to the Commission for review and a Commission determination. Interested persons may obtain copies of the nonconfidential version of the presiding officer's recommendation (and all other public documents on the record of the investigation) by contacting the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Room 161, Washington, D.C. 20436, telephone 202–523–0161.

COMMISSION HEARING: The Commission will hold a public hearing on September 17, 1981, in the Commission's Hearing Room, 701 E Street NW., Washington, D.C. 20436, beginning at 10:00 a.m. The hearing will be divided into two parts. First, the Commission will hear oral arguments on the presiding officer's recommended determination that a violation of section 337 of the Tariff Act of 1930 exists. Second, the Commission will hear presentations concerning appropriate relief, the effect that such relief would have upon the public interest, and the proper amount of the bond during the Presidential review period in the event that the Commission determines that there is a violation of section 337 and that relief should be granted. These matters will be heard on the same day in order to facilitate the completion of this investigation within time limits established under law and to minimize the burden of this hearing upon the parties.

ORAL ARGUMENTS: Any party to the Commission's investigation or any interested Government agency may present an oral argument concerning the presiding officer's recommended determination. That portion of a party's or an agency's total time allocated to oral argument may be used in any way the party or agency making argument sees fit, i.e., a portion of the time may be reserved for rebuttal or devoted to summation. The oral arguments will be held in the following order: complainant, respondents, Government agencies, and the Commission investigative attorney. Any rebuttals will be held in this order: respondents, complainant, Government agencies, and the Commission investigative attorney. Persons making oral argument are reminded that such argument must be based upon the evidentiary record certified to the Commission by the presiding officer.

ORAL PRESENTATIONS ON RELIEF, BONDING, AND THE PUBLIC INTEREST: Following the oral arguments on the presiding officer's recommendation, parties to the investigation, Government agencies, public-interest groups, and interested members of the public may make oral presentations on the issues of relief, bonding, and the public interest. This portion of the hearing is quasi-legislative in nature; presentations need not be confined to the evidentiary record certified to the Commission by the presiding officer, and may include the testimony of witnesses. Oral presentations on relief, bonding, and the public interest will be heard in the some order as oral arguments on the recommended determination.

If the Commission finds that a violation of section 337 has occurred, it may issue (1) an order which could result in the exclusion of the subject articles from entry into the United States and/or (2) an order which could result in one or more respondents being required to cease and desist from engaging in unfair methods of competition or unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in hearing presentations which address the form of relief, if any, which should be ordered.

If the Commission concludes that a violation of section 337 has occurred and contemplates some form of relief, it must consider the effect of that relief upon the public interest. The factors which the Commission will consider include the effect that an exclusion order and/or a cease and desist order would have upon (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) the U.S. production of articles which are like or directly competitive with those which are the subject of the investigation, and (4) U.S. consumers.

If the Commission finds that a violation of section 337 has occurred and orders some form of relief, the President has 60 days to approve or disapprove the Commission's action. During this period, the subject articles would be entitled to enter the United States under a bond in an amouut determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in hearing presentations concerning the amount of the bond, if any, which should be imposed.

TIME LIMIT FOR ORAL ARGUMENT AND ORAL PRESENTATIONS: Parties and Government agencies will be limited to a total of 30 minutes (exclusive of time consumed by questions from the Commission or its advisory staff) for making both oral argument

on violation and oral presentations on remedy, bonding, and the public interest. Persons making only oral presentations on remedy, bonding, and the public interest will be limited to 10 minutes (exclusive of time consumed by questions from the Commission and its advisory staff). The Commission may in its discretion expand the aforementioned time limits upon receipt of a timely request to do so.

WRITTEN SUBMISSIONS: In order to give greater focus to the hearing, the parties to the investigation and interested Government agencies are encouraged to file briefs on the issues of violation (to the extent they have not already briefed that issue in their written exceptions to the presiding officer's recommended determination), remedy, bonding, and the public interest. The complainant and the Commission investigative attorney are also requested to submit a proposed exclusion order and/or a proposed cease and desist order for the Commission's consideration. Persons other than the parties and Government agencies may file written submissions addressing the issues of remedy, bonding, and the public interest. Written submissions on the question of violation must be filed not later than the close of business on August 24, 1981; written submissions on the questions of remedy, bonding and public interest must be filed not later than the close of business on August 31, 1981. During the course of the hearing, the parties may be asked to file posthearing briefs.

NOTICE OF APPEARANCE: Written requests to appear at the Commission hearing must be filed with the Office of the Secretary by August 24, 1981.

ADDITIONAL INFORMATION: The original copy and 11 true copies of all briefs on violation must be filed with the Office of the Secretary not later than August 24, 1981; the original copy and 11 true copies of all briefs on remedy, bonding and public interest must be filed with the Office of the Secretary not later than August 31, 1981. Any person desiring to discuss confidential information, or to submit a document (or a portion thereof) to the Commission in confidence, must request in camera treatment unless the information has already been granted such treatment by the presiding officer. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. Documents or arguments containing confidential information approved by the Commission for in camera treatment will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Secretary's Office.

Notice of this investigation was published in the Federal Register of November 21, 1980. 45 FR 77190.

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FOR FURTHER INFORMATION CONTACT: Scott Daniels, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–523–0480.

By order of the Commission.

Issued: August 14, 1981.

KENNETH R. MASON,
Secretary.

Notice of Termination of Investigation No. 731–TA–45 (Preliminary)

CERTAIN STEEL WIRE NAILS FROM JAPAN

AGENCY: United States International Trade Commission.

ACTION: Termination of preliminary antidumping investigation.

EFFECTIVE DATE: August 14, 1981.

FOR FURTHER INFORMATION CONTACT: Mr. Lynn Featherstone, Office of Investigations, (202) 523–0242.

SUPPLEMENTARY INFORMATION: On July 2, 1981, the Commission received advice from the U.S. Department of Commerce that it was initiating an antidumping investigation concerning imports of certain steel wire nails from Japan. Accordingly, the Commission instituted a preliminary antidumping investigation to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded by reason of imports from Japan of steel wire nails, provided for in items 646.25 and 646.26 of the Tariff Schedules of the United States, which are possibly sold at less than fair value.

On August 11, 1981, the Commission received advice from the Department of Commerce that it was terminating its investigation concerning certain steel wire nails from Japan because sales below trigger prices ceased substantially prior to the initiation of the investigation and because Commerce received assurances from the Japanese manufacturers that all sales of the product for a two year period will be at prices at or above the relevant trigger price. Accordingly, the Commission's investigation concerning these products from Japan is hereby terminated.

Issued: August 14, 1981.

KENNETH R. MASON,
Secretary.

In the Matter of CERTAIN CARD DATA IMPRINTERS AND COMPONENTS THEREOF	Investigation No. 337–TA–104

Notice of Grant of Leave To Review Order No. 4 and of Affirmance of Order No. 4

AGENCY: U.S. International Trade Commission.

ACTION: Grant of application for review of Order No. 4 and affirmance of Order No. 4.

SUMMARY: Notice is hereby given that on the basis of an application for interlocutory review filed by parties respondents National Business Systems, Inc. (Canada), and National Business Systems, Inc. (U.S.), the Commission has granted the application for review of and affirmed the presiding officer's denial of a motion by those respondents to suspend the above-captioned investigation.

AUTHORITY: The authority for the Commission's action is contained in section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and in section 210.60(b) (19 CFR 210.60(b)) of the Commission's Rules of Practice and Procedure.

SUPPLEMENTARY INFORMATION: Upon receipt of a complaint filed by AM International, Inc., and Bartizan Corporation (collectively AM) the Commission instituted investigation No. 337–TA–104 on May 7, 1981, to determine whether there is a violation of section 337 of the Tariff Act of 1930 by reason of unfair methods of competition and unfair acts in the importation and sale of card data imprinters, alleged to infringe claim 7 of U.S. Letters Patent 3,272,120 (the '120 patent) and claim 12 of U.S. Letters Patent 3,340,800. Notice of the Commission's investigation was published in the Federal Register on June 12, 1981 (46 FR 31094).

Respondents National Business Systems, Inc. (Canada), and National Business Systems, Inc. (U.S.) (collectively NBS) moved (Motion No. 104–4) on June 15, 1981, to suspend this investigation because (1) complainant AM had filed an application with the Patent and Trademark Office to reissue the '120 patent, and (2) all of the patent issues in the investigation were being litigated in Federal court cases in Illinois and Colorado. The presiding officer denied the motion (Order No. 4), but granted respondents leave to file an interlocutory appeal with the Commission.

FOR FURTHER INFORMATION CONTACT: Joann P. DiGennaro, Esq., Office of the General Counsel, U.S International Trade Commission; telephone 202–523–0143.

By order of the Commission.

Issued: August 13, 1981.

KENNETH R. MASON,
Secretary.

In the Matter of CERTAIN STABILIZED HULL UNITS AND COMPONENTS THEREOF AND SONAR UNITS UTILIZING SAID STABILIZED HULL UNITS	Investigation No. 337–TA–103

Notice of Amendment of Complaint

AGENCY: U.S. International Trade Commission.

ACTION: Granting of motion to amend complaint.

SUMMARY: Notice is hereby given that on the basis of a motion filed by complainant Western Marine Inc. (WESMAR) (Motion 103–1), the Commission has allowed amendment of the complaint in order to describe more clearly the allegedly infringing device of respondents' Furuno U.S.A. and Furuno Japan and to show how that device allegedly infringes certain claims of U.S. Letters Patent 3,553,638.

AUTHORITY: The authority for Commission disposition of the subject motion is contained in section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337) and in section 210.22(a) (19 CFR 210.22(a)) of the Commission's Rules of Practice and Procedure.

SUPPLEMENTARY INFORMATION: Upon receipt of a complaint filed by WESMAR, the Commission voted to institute investigation No. 337–TA–103 on June 1, 1981, in order to determine whether there is a violation of section 337 of the Tariff Act of 1930 by reason of the importation into and sale in the United States of certain stabilized hull units and components thereof and sonar units utilizing said stabilized hull units. Complainant WESMAR alleges that the accused stabilized hull units and components thereof infringe claims 1, 11, 12, and 14 of U.S. Letters Patent 3,553,638 and that the components of the allegedly infringing device contribute to the infringement of said claims. Notice of the Commission's investigation was published in the Federal Register on June 10, 1981. (46 FR 30737.)

On July 7, 1981, WESMAR moved to amend the complaint (Motion

103–1) to describe more accurately the respondents' device and to show how that device allegedly infringes WESMAR's patent. Respondents opposed the motion to amend.

On July 15, 1981, the presiding officer issued and certified to the Commission a recommended determination (Order No. 3) that the motion to amend the complaint be granted.

FOR FURTHER INFORMATION CONTACT: William E. Perry, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–523–1693.

By order of the Commission.

Issued: August 13, 1981.

KENNETH R. MASON,
Secretary.

In the Matter of
CERTAIN HOT AIR CORN POPPERS AND COMPONENTS THEREOF } Investigation No. 337–TA–101

Notice of Intervention and Amendment of Notice of Investigation to include Intervenor As An Additional Party Respondent

AGENCY: U.S. International Trade Commission.

ACTION: Granting of motion to intervene and amendment of notice of investigation to include General Electric Company, Housewares & Audio Business Division, 1285 Boston Ave., Bridgeport, Conn. 06602, as an additional party respondent.

AUTHORITY: This investigation is being conducted under the authority of subsection (b) of section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337(b)). Section 210.6 of the Commission's Rules of Practice and Procedure (19 CFR 210.6) requires any person desiring to intervene in an investigation to file a motion setting forth a sufficient basis for such intervention. It also provides that, upon a showing of good cause, any interested person may be designated as a party. Amendment of the notice of investigation is governed by sections 210.22 of the Commission's rules (19 CFR 210.22) (incorporating section 210.20(d) (19 CFR 210.20(d)).

SUPPLEMENTARY INFORMATION: The Commission is conducting investigation No. 337–TA–101 in order to determine whether there is a violation of section 337 in the importation of certain hot air corn poppers and components thereof into the United States, or in the sale of such articles, which are alleged to infringe claims 1, 2, 3, and 5 of U.S. Letters Patent 4,178,843 with the effect or tend-

ency to destroy or substantially injure an industry, efficiently and economically operated, in the United States. These proceedings were initiated on the basis of an amended complaint filed on behalf of the assignee of the patent, Wear-Ever Aluminum, Inc. (Wear-Ever), a wholly-owned subsidiary of the Aluminum Company of America (ALCOA).

The notice instituting the investigation and defining its scope was published in the Federal Register on May 22, 1981 (46 FR 28043). The parties named as respondents included Yamada Electric Industries, Ltd. (Yamada) of Tokyo, Japan and Chiap Hua Clocks and Watches Ltd. (Chiap Hua) of Hong Kong—two foreign firms which produce the allegedly infringing apparatus and supply it to domestic distributors. The other respondents named included five domestic firms which the complainant has accused of importing and selling the subject merchandise—The West Bend Company, A Division of Dart Industries Inc. (West Bend),[1] Sunbeam Corp. (Sunbeam), Maxim Associates Corp. (Maxim), K Mart Corp. (K Mart), and The Stop & Shop Companies, Inc. (Stop & Shop).

On June 25, 1981, the General Electric Company (General Electric) filed a motion to intervene as a respondent in the investigation (Motion No. 101–4) by reason of the fact that, through its Housewares and Audio Business Division, General Electric has imported the allegedly infringing corn poppers produced by respondent Yamada and has sold such apparatus to respondents K Mart and Stop & Shop. Respondents Chiap Hua and West Bend subsequently filed responses indicating that they did not oppose the motion. On July 14, 1981, the presiding officer issued an order recommending that General Electric be added as a respondent.

Upon consideration of the motion to intervene (No. 101–4), the movant's proposed response to the complaint and notice of investigation, the recommendation of the presiding officer, and all other documents on the record developed in this investigation, on August 14, 1981, the Commission decided to grant Motion No. 101–4 and to deem the previously-issued notice of investigation amended to include the intervenor, General Electric, as an additional party respondent.

Copies of the Commission's Action and Order, as well as all other nonconfidential documents on the record of this investigation, are available for public inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E St. NW., Room 156, Washington, D.C. 20436, telephone 202–523–0471.

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[1] The notice listed West Bend as "The West Bend Co., Inc." However, by a letter dated July 28, 1981 in-house patent counsel advised the Commission that West Bend is a division of Dart Industries Inc. and not a corporation. For that reason, the previous notation is incorrect.

FOR FURTHER INFORMATION CONTACT: P. N. Smithey, Esq., Office of the General Counsel, U.S. International Trade Commission, 701 E St. NW., Room 224, Washington, D.C. 20436, telephone 202–523–0350.

By order of the Commission.

Issued: August 17, 1981.

KENNETH R. MASON,
Secretary.

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U.S. Customs Service